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14 **UNITED STATES BANKRUPTCY COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **RIVERSIDE DIVISION**

17 In re
18 CITY OF SAN BERNARDINO,
19 CALIFORNIA,

20 Debtor.

Case No. 6:12-bk-28006-MJ

Chapter 9

**ORDER CONFIRMING THIRD
AMENDED PLAN FOR THE
ADJUSTMENT OF DEBTS OF THE CITY
OF SAN BERNARDINO, CALIFORNIA
(JULY 29, 2016), AS MODIFIED;
FINDINGS OF FACT AND CONCLUSIONS
OF LAW IN RESPECT THEREOF**

1 1. On July 29, 2016, the City of San Bernardino, California (“City”) filed with this U.S.
2 Bankruptcy Court (the “Court”) the City’s *Third Amended Plan for the Adjustment of Debts of the City*
3 *of San Bernardino, California (July 29, 2016)* (the “Plan”), the *Third Amended Disclosure Statement*
4 with respect to the Plan (the “Disclosure Statement”), an Appendix of Exhibits, a notice of the materials
5 distributed to all known creditors in connection with voting on the Plan and the hearing on confirmation
6 of the Plan, and related documents [Dkt. Nos. 1880 through 1885] (the “Solicitation Materials”), and
7 began solicitation of acceptances of the Plan. Prior to that date, on July 7, 2016, the Court entered its
8 order approving the Disclosure Statement and setting certain deadlines and procedures for voting to
9 accept or reject the Plan and filing objections to confirmation of the Plan [Dkt. No. 1874] (the
10 “Disclosure Statement Order”).

11 2. On September 30, 2016, the City filed and served its Memorandum of Law in Support of
12 the Plan (the “Memorandum”) and related pleadings, a Notice of Plan Modifications, the Declaration of
13 Catherine Nownes-Whitaker (the “Ballot Tabulation”) and the Declarations of John E. Bartel, Jarrod
14 Burguan, Michael Busch, Kenneth Dieker, Georgeann Hanna, Mark Scott, Justin McCrary [Dkt. Nos.
15 1981-1992], and shortly thereafter a supplemental declaration from Justin McCrary [Dkt. Nos. 1997 and
16 1998] (the “Declarations”). The Ballot Tabulation reported that all classes of impaired claims voted to
17 accept the Plan. With respect to Class 13 of the Plan, the impaired class of General Unsecured Claims,¹
18 983 creditors holding \$154 million in claims voted to accept the Plan, and 43 creditors holding \$2.8
19 million in claims voted to reject the Plan. Class 13, which is receiving a 1% distribution on allowed
20 claims, voted to accept the Plan by more than 95% of votes cast and more than 98% in dollar amount of
21 such claims.

22 3. The hearings on confirmation of the Plan commenced on October 14, 2016, at 10:00 a.m.
23 and continued on November 15 and December 6, 2016 (the three hearings are referred to as, the

24
25 ¹ All capitalized terms used but not defined herein are used as defined in the Plan or Disclosure
26 Statement. Any term used in the Plan or this Confirmation Order that is not defined in the Plan,
27 Disclosure Statement or this Confirmation Order but that is used in the Bankruptcy Code or the
28 Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the
Bankruptcy Rules. To the extent of any conflict or inconsistency between the terms of the Plan and this
Confirmation Order, the Confirmation Order shall govern. Any ambiguity in the Plan shall be resolved
by reference to this Confirmation Order to the fullest extent possible.

1 “Confirmation Hearing”). At the Confirmation Hearing, only four creditors holding unliquidated
2 Litigation Claims maintained objections to confirmation of the Plan – William Schmart, Paul Triplett,
3 Rovinski Renter and Javier Banuelos (the “Objections”), all other objections having been resolved or
4 withdrawn. At the Confirmation Hearing, the Court admitted the Ballot Tabulation and Declarations
5 into evidence, including the reports and other exhibits attached to such Declarations, without objection
6 by any creditor or other party in interest. Based upon the Declarations, the legal authority set forth in
7 the Memorandum, the record of the Confirmation Hearing and this Confirmation Order, all objections to
8 confirmation of the Plan, including the Objections, that have not been consensually resolved, are
9 overruled on the merits pursuant to this order (this “Confirmation Order”).²

10 4. The Court having reviewed the Plan, the Disclosure Statement, the Disclosure Statement
11 Order, the Appendix of Exhibits, the Ballot Tabulation, the Declarations and the reports and other
12 exhibits attached to such Declarations, the Objections, the Memorandum, and the other papers before the
13 Court in connection with the confirmation of the Plan; having heard the statements of counsel in support
14 of and in opposition to confirmation of the Plan at the Confirmation Hearing as reflected in the record at
15 the Confirmation Hearing; having considered all evidence admitted at the Confirmation Hearing; having
16 taken judicial notice of the papers and pleadings on file in the Bankruptcy Case³; and after due
17 deliberation and having determined that (i) notice of the Confirmation Hearing and the opportunity of
18 any party in interest to object to confirmation of the Plan were adequate and appropriate in accordance
19 with Federal Rules of Bankruptcy Procedure (“Bankruptcy Rule(s)”) 2002 and 3016 through 3020 and
20 the Disclosure Statement Order, as to all entities to be affected by the Plan and the injunctions provided
21 for therein, and (ii) the legal and factual bases set forth in the Memorandum and at the Confirmation
22

23 ² In addition to overruling the Objections on the merits, the Banuelos Objection is separately overruled
24 because it was filed 39 days after the Court-established deadline for filing objections to confirmation of
25 the Plan, and the Renter Objection is separately overruled because it was filed as a joinder to an
26 objection to confirmation that was subsequently withdrawn. *See* Bankruptcy Rule 3020(b)(1) (“An
objection to confirmation of the plan shall be filed . . . within a time fixed by the court.”).

27 ³ The Court takes judicial notice of the docket of the Bankruptcy Case maintained by the Clerk of the
28 Court, including, without limitation, all pleadings and other documents filed, all orders entered, and all
evidence and argument made, proffered or adduced at the hearings held before the Court during the
pendency of the Bankruptcy Case. *See* Federal Rule of Evidence 201(c).

1 Hearing and as set forth in this Confirmation Order establish just cause for the relief granted herein, the
2 Court hereby makes the following Findings of Fact and Conclusions of Law:⁴

3 **IT IS HEREBY FOUND AND DETERMINED THAT:**

4 5. Exclusive Jurisdiction; Venue; Core Proceeding (28 U.S.C. §§ 157 and 1334). This
5 Court has jurisdiction over the Bankruptcy Case pursuant to 28 U.S.C. §§ 157 and 1334. Venue is
6 proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core
7 proceeding pursuant to 28 U.S.C. § 157(b)(2)(L), and this Court has exclusive jurisdiction to determine
8 whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be
9 confirmed, and to enter a final order with respect thereto. The City is a proper debtor under Section⁵
10 109 and the proper proponent of the Plan under Section 941. The City filed the Plan by the deadline set
11 by the Court.

12 6. Modifications of the Plan.

13 6.1. On September 30, 2016, the City filed and served certain Plan modifications (Dkt.
14 No. 1992, the “First Modifications”). Only one party in interest, the Big Independent Cities Excess Pool
15 Joint Powers Authority (“BICEP”), filed an objection to the First Modifications, and on November 10,
16 2016, the City proposed additional Plan modifications to address BICEP’s concerns (Dkt. No. 2049 at
17 17:9-11 and 18:9-21, the “Second Modifications”). The Second Modifications became part of the
18 settlement between BICEP and the City (Dkt. 2096, 3:7-20), which settlement will be approved pursuant
19 to this Confirmation Order. The Court also requested that the City clarify Article VII.D. of the Plan with
20 respect to indemnification of employees. The City modified the Plan by revising the language in Article
21 VII.D. of the Plan, which had provided, “In addition, following the Effective Date, the City will
22 continue to provide Indemnification in accordance with the City’s pre-petition practices (as revised from
23 time to time). The City reserves the right to provide or deny requests or demands for Indemnification in
24 accordance with its practices,” to provide, “The City shall indemnify the past and present officers and
25

26 ⁴ These written findings and conclusions supplement the oral findings and conclusions states by the
27 court at the confirmation hearings. Any inconsistency between the oral rulings and the written rulings
shall be resolved by giving deference to the written rulings.

28 ⁵ Unless otherwise indicated, all “Section” references are to title 11 of the U.S. Code, the Bankruptcy
Code.

1 employees of the City with respect to claims against such officers and employees that arose prior to the
2 Confirmation Date in accordance with the City's pre-petition practices and state law, and the City shall
3 continue to provide such indemnification with respect to claims against officers and employees that arise
4 after the Confirmation Date." (the "Third Modification").

5 6.2. The First, Second and Third Modifications are hereinafter referred to as the "Plan
6 Modifications." The City asserted that the Plan Modifications benefit creditors, and the Court finds that
7 the Plan Modifications do not materially adversely affect or change the treatment of any holders of
8 claims who have not accepted such Plan Modifications. Accordingly, pursuant to Section 942 and
9 Bankruptcy Rule 3019, the Plan Modifications do not require additional disclosure under Section 1125
10 or re-solicitation of acceptances or rejections under Section 1126, nor do the Plan Modifications require
11 that holders of claims be afforded an opportunity to change previously cast acceptances or rejections of
12 the Plan. Disclosure of the Plan Modifications in the filings and service on September 30 and November
13 10, 2016 and in the record at the Confirmation Hearing constitutes due and sufficient notice thereof
14 under the circumstances of the Bankruptcy Case. Accordingly, all references to the Plan herein shall
15 mean the Plan as modified by the Plan Modifications, and all votes cast with respect to the Plan prior to
16 the filing of the Plan Modifications shall continue to be binding and shall apply with respect to the Plan
17 as modified by the Plan Modifications. A redline showing the Plan filed on July 29, 2016 as modified
18 by the Plan Modifications was filed by the City on January 3, 2017. The Plan attached hereto as Exhibit
19 A incorporates the Plan Modifications and is the Plan confirmed by this Confirmation Order.

20 7. Transmittal and Mailing of Materials; Notice. The Solicitation Materials were
21 transmitted and served upon all interested parties in compliance with the Disclosure Statement Order
22 and in compliance with the Bankruptcy Rules, and such transmittal and service was adequate and
23 sufficient. *See Notice of Materials Distributed to Creditors in Connection with the Hearing on*
24 *Confirmation of the City's Chapter 9 Plan of Adjustment of Debts* [Dkt. No. 1883]. Notice of the
25 Confirmation Hearing and all deadlines in the Disclosure Statement Order was given in compliance with
26 the Bankruptcy Rules and the Disclosure Statement Order and was good and sufficient notice in
27 accordance with Bankruptcy Rules 2002 and 3020, and no other or further notice is or was required.
28 Votes for acceptance or rejection of the Plan were solicited in good faith, after transmittal of the

1 Disclosure Statement containing adequate information, and otherwise in compliance with Bankruptcy
2 Code sections 1125 and 1126 and Bankruptcy Rules 3016 through 3020.

3 8. Impaired Classes Voting to Accept the Plan. As evidenced by the Ballot Tabulation, all
4 impaired Classes of Claims, meaning Classes 1, 2, 5, 6, 9, 12, 13 and 14 (and Classes 10 and 11 that are
5 incorporated into Class 13), voted to accept the Plan pursuant to the requirements of Sections 1124 and
6 1126. Thus, at least one impaired class of Claims has voted to accept the Plan.

7 9. Classes Deemed To Accept the Plan. Classes 3, 4, 7 and 8 are not impaired under the
8 Plan and are deemed to have accepted the Plan pursuant to Section 1126(f).

9 10. No Cramdown Required. Since all Classes of Claims either voted to accept the Plan or
10 are deemed to accept the Plan, Section 1129(b) does not apply and the Court is not required to consider
11 the cramdown requirements of Section 1129(b) as to any Class of Claims (as there are no dissenting
12 Classes).

13 11. Plan Compliance With Section 941. Section 941 requires that the Debtor file a plan of
14 adjustment with the petition for relief, or by any deadline for doing so set by the Court. The City
15 complied with each of the Court's deadlines related to filing of the Plan, including timely filing the Plan
16 that creditors voted on. Thus, the Plan satisfies Section 941.

17 12. Plan Compliance With Section 943(b)(1). The Plan complies with the provisions of the
18 Bankruptcy Code made applicable to chapter 9.

19 12.1. Classification and Treatment of Claims (11 U.S.C. §§ 1122, 1123(a)(1) - (4)).

20 12.1.1. In accordance with Section 1122(a), Article III of the Plan classifies
21 each Claim against the City into a Class containing only substantially similar Claims. The legal rights
22 under applicable law of each holder of Claims within each Class under the Plan are substantially similar
23 in nature and character to the legal rights of all other holders of Claims within such Class. No Claims
24 were separately classified under the Plan to gerrymander favorable votes with respect to the Plan. In
25 accordance with Section 1122(b), convenience claims are separately classified in Class 14 under the
26 Plan solely for the purpose of administrative convenience. In accordance with Section 1123(a)(1),
27 Article III of the Plan properly classifies all Claims that require classification. Valid factual and legal
28 reasons exist for the separate classification of (a) certain secured Claims from other secured Claims and

1 (b) certain unsecured Claims from other unsecured Claims. In accordance with Section 1123(a)(2),
2 Article IV of the Plan properly identifies and describes each Class of Claims that is not impaired under
3 the Plan. In accordance with Section 1123(a)(3), Article IV of the Plan properly identifies and describes
4 the treatment of each Class of Claims that is impaired under the Plan. In accordance with Section
5 1123(a)(4), the Plan provides the same treatment for each Claim of a particular Class.

6 12.1.2. Class 8 is comprised of the claims of CalPERS. After a successful
7 mediation led by Judge Zive, the City entered into a settlement with CalPERS that resolved a number of
8 complex and disputed statutory and contractual claims of CalPERS. Good business, economic and
9 public policy reasons supported the City's entering into the settlement with CalPERS, including that the
10 City is unable to hire and maintain a sustainable workforce at this time without continuing to provide
11 CalPERS pension benefits to its employees. In order to treat CalPERS' claims pursuant to the
12 settlement, the City separately classified the claims. Therefore, the City had legitimate economic
13 reasons for separately classifying CalPERS' claims. Not a single confirmation objection was filed to (i)
14 the City's settlement with CalPERS, (ii) the separate classification of CalPERS' claims or (iii) the
15 treatment of CalPERS' claims under the Plan.

16 12.1.3. Class 12 is comprised of the claims of the POB Creditors (which defined
17 term, as used herein and in the Plan, the Disclosure Statement and related documents, shall include, for
18 the avoidance of doubt, Ambac Assurance Corporation), who held claims of approximately \$51 million
19 based upon the POBs. Although the City argued that the POB Creditors hold general unsecured claims,
20 that position was disputed by the POB Creditors who argued that under California law they were entitled
21 to payment on their claims with the same priority as the payments the City makes to CalPERS. The
22 Court entered an order dismissing the POB Creditors' complaint for declaratory relief on the matter, but
23 the POB Creditors took an appeal to the Bankruptcy Appellate Panel for the Ninth Circuit (the
24 "B.A.P."), which appeal is still pending at the B.A.P. The treatment of the POB Creditors under the
25 Plan, paying them approximately 40 cents on the dollar over a 30 year term, reflects the City's decision
26 to settle rather than litigate with the POB Creditors. Settlements and compromises are "a normal part of
27 the process of reorganization." *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v.*
28 *Anderson*, 390 U.S. 414, 424, 88 S. Ct. 1157, 1163 (1968) (quoting *Case v. Los Angeles Lumber Prods.*

1 *Co.*, 308 U.S. 106, 130 (1939)). In evaluating whether a proposed agreement is fair and equitable,
2 courts in the Ninth Circuit generally consider four factors: (a) the probability of success in the litigation;
3 (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the
4 litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the
5 interest of the creditors and a proper deference to their reasonable views. *Arden v. Motel Partners (In re*
6 *Arden)*, 176 F.3d 1226, 1228 (9th Cir. 1999); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988); *Martin*
7 *v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). Given the unique litigation risk
8 – the complexity of the litigation, the procedural posture and the potential impact a reversal on appeal
9 could have on the feasibility of the Plan – and the fact that the City believed that settlement would assist
10 the City in obtaining necessary public financing in the capital markets in the future, the City was well
11 within its discretion to settle. Moreover, no creditor or other party filed an objection to the separate
12 classification and treatment of the POB Creditors. There is no evidence that the City classified the POB
13 Creditor claims separately for the purpose of gerrymandering the vote. As the vote tabulation shows,
14 even without Class 12, several other classes of impaired creditors voted to accept the Plan, so Class 12
15 was not separately classified to create an impaired consenting class.

16 12.1.4. Thus, the City was well within its discretion to separately classify and
17 treat the claims of CalPERS and the POB Creditors and did so for good business and economic reasons.
18 The Court finds that the CalPERS Claims and POB Claims are validly classified separately from other
19 claims because they have a different legal character, and there are good business reasons to do so.

20 12.1.5. Under the Plan, Litigation Claims are included in Class 13, the class of
21 General Unsecured Claims that receives a 1% distribution on the allowed amount of the claim. One or
22 more of the Objections to confirmation of the Plan argued that the Litigation Claims should have been
23 separately classified and not included in Class 13 and should have received better treatment than other
24 General Unsecured Claims. However, the Litigation Claims are substantially similar to the other claims
25 in Class 13 and classifying them in the same class with the other General Unsecured Claims is a
26 legitimate exercise of the City's discretion in structuring its Plan.⁶ Substantially similar claims are those

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28 ⁶ See *Steelcase Inc. v. Johnston (In re Johnston)*, 21 F.3d 323, 327-28 (9th Cir. 1993) (proponent of
plan has wide latitude in determining whether similar claims should be separately classified); *Franklin*

1 that “share common priority and rights against the debtor’s estate.” *In re Greystone III Joint Venture*,
2 995 F.2d 1274, 1278 (5th Cir. 1991). “Unsecured claims will, generally speaking, comprise one class
3 . . . because they are claimants of equal legal rank entitled to share pro rata in values remaining after
4 payment of secured and priority claims.” *FGH Realty Corp. v. Newark Airport/Hotel Ltd. P’ship*, 155
5 B.R. 93, 99 (D. N.J. 1993). Numerous courts have held that litigation claims against a debtor have the
6 same rights under state law as unsecured notes, unsecured claims for goods and services, and unsecured
7 contract claims, and all such claims should generally be placed in a single class. *See e.g., In re*
8 *Frascella Enterprises, Inc.*, 360 B.R. 435, 443 (Bankr. E.D. Pa. 2007) (“Unsecured claims, whether
9 trade, tort, unsecured notes, or deficiency claims of secured creditors, are generally included in a single
10 class because they are of equal rank entitled to share pro rata in values remaining after payment of
11 secured and priority claims.”) (quoting *In re 266 Washington Assoc.*, 141 B.R. 275, 282 (Bankr.
12 E.D.N.Y. 1992)); *see also Norton Bankruptcy Law and Practice*, § 60.5 (“Unsecured claims will,
13 generally speaking, comprise one class, whether trade, tort, publicly held debt or a deficiency of a
14 secured creditor.”). Under applicable non-bankruptcy law, the holders of Litigation Claims have no
15 greater right, interest or priority of payment on their claims against the City than the unpaid providers of
16 goods and services, or contract counterparties with breach claims against the City. Therefore, the
17 Litigation Claims are substantially similar to the other claims in Class 13, and the City was authorized
18 under Section 1122(a) to classify all those unsecured claims in a single class.

19 12.1.6. A related classification objection made in one or more of the Objections
20 was that certain of the Litigation Claims are civil rights claims arising under 42 U.S.C. § 1983
21 (“§ 1983”), and such claims should not be discharged or impaired in bankruptcy proceedings. But civil
22 rights claims may be impaired in bankruptcy proceedings and are dischargeable, just like other claims
23 against a debtor. “Congress has restructured the bankruptcy act several times and has never sought to
24 restrain cities from using bankruptcy as a tool to restructure debts incurred by civil rights judgments.”
25 *Silver Sage Partners, Ltd. v. City of Desert Hot Springs (In re City of Desert Hot Springs)*, 339 F.3d

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27 *High Yield Tax-Free Income Fund et al. v. City of Stockton, California (In re City of Stockton,*
28 *California)*, 542 B.R. 261, 280 (B.A.P. 9th Cir. 2015) (“Generally, § 1122 allows plan proponents broad
discretion to classify claims and interests according to the particular facts and circumstances of each
case.”).

1 782, 791 (2003), *cert. denied*, 540 U.S. 1110, 124 S. Ct. 1076 (2004); *see also O’Loghlin v. County of*
2 *Orange*, 229 F.3d 871, 874 (9th Cir. 2000) (holding that discharge provision of Section 944(b) barred
3 any post-confirmation prosecution of claims arising under the Americans with Disability Act (“ADA”)
4 that arose prior to the entry of the confirmation order in the chapter 9 case of Orange County, including
5 both pre-petition and post-petition claims, as long the claims are based upon pre-confirmation violations
6 of the ADA). Similarly, in *Ortiz v County of Orange*, 1998 U.S. App. LEXIS 16486 (9th Cir. 1998), the
7 Ninth Circuit held that a civil rights plaintiff’s prepetition § 1983 claims against Orange County and
8 three County officials were discharged by the operation of Section 944(b) and confirmation of Orange
9 County’s chapter 9 plan. “The confirmation of the County’s plan thus erases the County’s liability for
10 damages on Ortiz’s § 1983 claims.” *Id.*⁷ Under these precedents, § 1983 and other civil rights claims
11 against the City and the City’s police officers in their official capacity are discharged under Section
12 944(b).

13 12.1.7. The question of whether claims arising under § 1983 can be discharged
14 was also addressed in the recent Detroit chapter 9 case. Under the Detroit chapter 9 plan, § 1983 claims
15 were treated as general unsecured claims and received notes with an estimated recovery value of 10-13
16 cents on the dollar.⁸ Holders of § 1983 claims objected to confirmation and argued that treatment of
17 their claims as unsecured claims violated their Fourteenth Amendment right to receive compensation for
18 the violations of their constitutional rights,⁹ which claims they argued cannot be impaired under a

19 _____
20 ⁷ *See also, V.W. ex rel. Barber v. City of Vallejo (In re City of Vallejo)*, 2013 U.S. Dist. LEXIS 109145
21 (E.D. Cal. 2013) (holding that § 1983 claims against City of Vallejo and its chief of police in his official
22 capacity that arose after commencement of the chapter 9 case and before confirmation of the plan are
23 discharged under Section 944(b) and barred from further prosecution); *Johnson v. Hoagland*, 32 Fed.
24 Appx. 22, 23 (3d Cir. 2002) (pre-confirmation date § 1983 claim against police officer discharged when
25 police officer obtained a chapter 7 discharge).

26 ⁸ *See Eighth Amended Plan for Adjustment of Debts of the City of Detroit* at 51, *In re City of Detroit*,
27 *Mich.*, (Bankr. E.D. Mich.), Case No. 13-53846, Dkt. No. 8045; *see also In re City of Detroit*,
28 *Michigan*, 524 B.R. 147, 262 (Bankr. E.D. Mich. 2014) (referring to Detroit’s Fourth Amended
Disclosure Statement, Dkt. No. 4391, at 41).

⁹ The Fourteenth Amendment does not itself provide any right of action for constitutional violations but
instead assigns that task to Congress, which has the “power to enforce, by appropriate legislation, the
provisions of” the Fourteenth Amendment. U.S. Const. amend. XIV, § 5. In § 1983, Congress created a
cause of action for individuals who suffer violations of their federal constitutional rights committed
under color of state law. § 1983 imposes “a species of tort liability,” and creates a right to money

1 bankruptcy plan.¹⁰ In support of its treatment of the § 1983 claims as unsecured claims and
2 dischargeable, Detroit argued that (a) the claims fell squarely within the definition of claim under
3 Bankruptcy Code Section 101(5), (b) had Congress intended to carve out such claims from
4 dischargeability in chapter 9 cases it could have done so, and (c) instead, § 1983 claims are not included
5 in applicable exceptions to discharge.¹¹ Accordingly, Detroit argued that Congress did not intend that
6 § 1983 claims be deemed non-dischargeable.

7 12.1.8. U.S. Bankruptcy Judge Rhodes certified to the U.S. Attorney General
8 that the constitutionality of chapter 9 was called into question by the § 1983 claimants, and the Attorney
9 General filed a brief. The Attorney General agreed with Detroit that the damages remedy set forth in
10 § 1983 exists by legislative grace and is not a constitutional requirement. The Attorney General
11 concluded that “[b]ecause section 1983 creates a damages remedy and not substantive rights and
12 because that remedy arises from congressional enactment and not constitutional mandate, the United
13 States submits that the Plan’s treatment of the section 1983 claims does not raise an issue arising under
14 the Fourteenth Amendment.” *See United States of America’s Brief in Response to Order of Certification*
15 *Pursuant to 28 U.S.C. § 2403(a)*, Detroit Docket No. 6664. Judge Rhodes agreed. *See In re City of*
16 *Detroit, Michigan*, 524 B.R. 147, 262-65 (Bankr. E.D. Mich. 2014) (impairing and discharging the
17 § 1983 claims against the City of Detroit does not violate the Fourteenth Amendment), *appeal dismissed*
18 *as moot*, 2015 U.S. Dist. LEXIS 134477, *16 (E.D. Mich. September 29, 2015).

19 12.1.9. In sum, the Ninth Circuit has held that prepetition and post-petition civil
20 rights claims in general, and § 1983 claims specifically, are dischargeable claims in a chapter 9 case, the
21 U.S. Department of Justice agrees, as did the bankruptcy court in the largest chapter 9 bankruptcy in
22 U.S. history, and the U.S. District Court in the Detroit case dismissed the appeal from the order

23
24 damages for those who are the victims of constitutional violations perpetrated under color of state law.
25 *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 709 (1999) (quoting *Heck v.*
26 *Humphrey*, 512 U.S.477, 483 (1994)). § 1983 claims are statutory tort claims, not constitutional claims
because the damages remedy in § 1983 exists only by legislative grace and not constitutional
requirement.

27 ¹⁰ *See Objection of Creditors Deborah Ryan, et al.*, Detroit Dkt. No. 4099; *Brief in Concurrence of*
Creditors Dwayne Proviencce, et al., Detroit Dkt. No. 5693.

28 ¹¹ *See Debtor’s Supplemental Brief On Legal Issues*, Detroit Docket No. 5707.

1 confirming the Detroit chapter 9 plan. The Objection that civil rights claims must be or should be
2 separately classified and treated better than other General Unsecured Claims is not supported by any
3 precedent or convincing argument and is overruled.

4 12.1.10. Therefore, the Plan complies with the requirements of Sections 1122,
5 1123(a)(1), 1123(a)(2), 1123(a)(3) and 1123(a)(4).

6 12.1.11. Even if, *arguendo*, the Plan had classified Litigation Claims as a
7 separate class, and assuming that such a hypothetical class had voted to reject the Plan, the Plan would
8 still satisfy the cramdown requirements of Section 1129(b) with respect to such hypothetical dissenting
9 class of Litigation Claims. Section 1129(b) authorizes the Court to confirm the Plan even if not all
10 impaired classes have accepted the Plan, provided that the Plan has been accepted by at least one
11 impaired class and that “the plan does not discriminate unfairly, and is fair and equitable, with respect to
12 each class of claims or interests that is impaired under, and has not accepted, the plan.” 11 U.S.C. §
13 1129(b)(1). Here, impaired classes 1, 2, 5, 6, 9, 12, 13 (inclusive of Classes 10 and 11 incorporated
14 therein) and 14 voted to accept the Plan, therefore the Plan has been accepted by at least one impaired
15 class. Section 1129(b)(2)(B) of the Bankruptcy Code (the codification of the so-called “absolute priority
16 rule”) provides that, for a plan to be fair and equitable, unsecured creditors may receive less than the
17 value of their claims as of the effective date of a plan only if no class of junior claims or interests
18 receives any distribution on account of their claims or interests. 11 U.S.C. § 1129(b)(2)(B). Application
19 of the absolute priority rule to unsecured creditors of a municipal debtor generally is not possible
20 because, in chapter 9, there can be no junior class of equity interests, the class most commonly
21 prevented from receiving or retaining property by the application of the absolute priority rule. *See In re*
22 *Corcoran Hosp. Dist.*, 233 B.R. 449, 458 (Bankr. E.D. Cal. 1999) (holding that the proposed chapter 9
23 plan did not implicate the absolute priority rule because there were no holders of equity interests in the
24 debtor hospital). Rather, the requirement that a plan be fair and equitable as to unsecured creditors of a
25 municipal debtor is satisfied where creditors receive “all that they can reasonably expect in the
26 circumstances.” *See Lorber v. Vista Irr. Dist.*, 127 F.2d 628, 639 (9th Cir. 1942) (collecting cases), *cert.*
27 *denied* 323 U.S. 784, 65 S. Ct. 270 (1944); *see also West Coast Life Ins. Co. v. Merced Irr. Dist.*, 114
28 F.2d 654, 679 (9th Cir. 1940) (affirming confirmation of plan under municipal debtor provisions of

1 Bankruptcy Act of 1898 when the plan payments were “all that could reasonably be expected in all the
2 existing circumstances”). In determining what can reasonably be expected under the circumstances, it is
3 not necessary that all taxes collected go to pay creditors, because the municipality must retain adequate
4 funding to continue operations. *Lorber*, 127 F.2d at 639, *Corcoran*, 233 B.R. at 459; *Collier on*
5 *Bankruptcy*, ¶ 943.03[1][f][B], Alan N. Resnick & Henry J. Sommer, 16th ed. (further references to this
6 source are cited as “*Collier*”).

7 12.1.12. Here, the City is proposing to pay creditors what the circumstances
8 allow, which is all that can reasonably be expected. The City’s financial crisis forced the City to
9 severely cut municipal services, which process continued during the chapter 9 case. As demonstrated in
10 the Busch Decl. and described in the Plan, the City does not now have, and is not projected to have, the
11 financial resources to fully fund its infrastructure repairs and necessary rebuilding of police and other
12 municipal services, let alone pay anything more on general unsecured claims than 1%. The amount of
13 the City’s deferral of spending on basic municipal infrastructure has been dramatic: \$180 million
14 deferred for street repairs, \$130 million deferred for facility repairs and improvements, the failure to
15 inspect 80% of the sewer system. Even after paying only 1% on Class 13 General Unsecured Claims,
16 those and other basics of municipal services will not be fully funded during the course of the City’s 20-
17 year Financial Model; indeed some may not be funded at even 50% of what is required. *See* Busch
18 Decl. at ¶¶21-26; Scott Decl. at ¶9; and discussion in the City’s Disclosure Statement of the extensive
19 deferrals. Even that limited funding, to keep the City moving towards service solvency, is based upon
20 the Financial Model’s assumption that the City can discharge its \$209.3 million of unsecured debt based
21 upon a 1% distribution on allowed claims. *See* Busch Decl. at ¶14; Scott Decl. at ¶9.¹²

22 12.1.13. Under the Plan, approximately \$209.3 million in General Unsecured
23 Claims will receive a distribution of 1% on the Allowed Claims, comprised of approximately:
24 \$46.7 million of liquidated retiree claims; \$129.8 million of liquidated Consenting Union Claims;
25 \$22.8 million of estimated Litigation Claims; and \$10 million of additional unsecured claims. If the
26 City is required to pay more on general unsecured claims, it will have nothing left to fund its

27 _____
28 ¹² The impact of financial shortfalls on the on the provision of municipal services has been called
“service insolvency” and addressing such service insolvency is a primary reason cites file chapter 9.

1 rehabilitation and service stabilization. If the City cannot provide adequate services, especially police
2 services, it will not be able to attract new economic activity. If the City cannot dedicate its resources to
3 rehabilitation, it will continue a cycle of decline that led to the chapter 9 case in the first place.

4 Therefore, the City's proposed 1% distribution to general unsecured creditors is all that can reasonably
5 be expected under the existing circumstances. The 1% distribution would apply to the Litigation Claims
6 whether they are included in Class 13 or separately classified. Thus, there is no benefit to separate
7 classification of the Litigation Claims; they would still only get 1%, because the unrefuted evidence
8 shows that 1% is all that the City has available to pay them. Therefore, the Plan is fair and equitable
9 under Section 1129(b) as to Litigation Claims and all other claims.

10 12.1.14. The Plan is also fair and equitable in the nonbankruptcy sense because
11 it treats substantially all unsecured claims, including Litigation Claims, equally – holders of Litigation
12 Claims against Indemnified Parties are treated the same as holders of comparable Litigation Claims
13 against the City. That Plan feature avoids a potential scenario where a § 1983 claim against one of the
14 City's police officers could get paid 100%, while a comparable § 1983 claim against the City, even on
15 the same facts, would receive only a 1% distribution.

16 12.1.15. The Plan also does not discriminate unfairly with respect to holders of
17 Litigation Claims. The estimated \$23 million of Litigation Claims are receiving the very same treatment
18 as the other \$186 million in General Unsecured Claims that are in Class 13. All holders of General
19 Unsecured Claimants – retirees, employees, trade creditors and holders of Litigation Claims – are
20 sharing the pain, equally. Accordingly the Court finds and concludes that the Plan is fair and equitable
21 and does not discriminate unfairly with respect to any hypothetical separate class of Litigation Claims
22 and satisfies the cramdown requirements of Section 1129(b) with respect to such hypothetical class of
23 Litigation Claims and all other claims.

24 12.2. Adequate Means to Implement the Plan (11 U.S.C. § 1123(a)(5)). In accordance
25 with Section 1123(a)(5), Article VII of the Plan provides adequate means for its implementation,
26 including that the City will continue to collect sales tax revenues, real property tax revenues, user utility
27 taxes, and other taxes, fees, and revenues following the Effective Date. *See* Plan at Article VII; *see also*
28 Disclosure Statement at Article V.C. (discussing revenue enhancement measures, regionalization or

1 outsourcing of City services, the City's Police Resources Plan, street and road repair, seismic retrofits
2 and Charter reform). These revenues will enable the City to maintain and fund municipal services,
3 including fire and police protection, as well as to satisfy the City's obligations to its creditors as
4 restructured pursuant to the Plan. The City's financial advisors prepared a detailed long-term financial
5 plan (the "Financial Model") which projects that, with the savings from the adjustment of debts under
6 the Plan, the City will achieve a balanced and sustainable budget for the foreseeable future. *See*
7 Disclosure Statement at Article VI.D.; *see also* Busch Declaration at ¶14.

8 12.3. Permitted Plan Provisions (11U.S.C. § 1123(b)). In accordance with Section
9 1123(b)(1), Article IV of the Plan impairs or leaves unimpaired, as the case may be, each Class of
10 Claims. In accordance with Section 1123(b)(2), Article VI of the Plan provides for the assumption,
11 assumption and assignment, or rejection of the Executory Contracts or Unexpired Leases of the City that
12 have not been previously assumed, assumed and assigned, or rejected pursuant to section 365 of the
13 Bankruptcy Code and orders of the Court. In accordance with Section 1123(b)(3), Article VIII of the
14 Plan provides that the City shall retain all of its claims, causes of action, rights of recovery, rights of
15 offset, recoupment rights to refunds, and similar rights. In accordance with Section 1123(b)(5), Article
16 IV of the Plan modifies or leaves unaffected, as the case may be, the rights of holders of Claims in each
17 Class. In accordance with Section 1123(b)(6), the Plan includes additional appropriate provisions that
18 are not inconsistent with applicable provisions of the Bankruptcy Code, including the provisions of
19 Articles IX (Distributions), X (Disputed Claims), XI (Effect of Confirmation), XII (Retention of
20 Jurisdiction), XIII (Conditions Precedent) and XIV (Miscellaneous Provisions).

21 12.4. Disclosure, Solicitation & Acceptance (11 U.S.C. §§ 1125, 1126 and 1129(a)(2)).

22 12.4.1. In accordance with Section 1129(a)(2), the City has complied with the
23 applicable provisions of the Bankruptcy Code. The legislative history to Section 1129(a)(2) reveals that
24 the purpose of this requirement is to incorporate the provisions of Sections 1125 and 1126 regarding
25 disclosure and plan solicitation. *See* H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 95-989 (1978).
26 The City has complied with the requirements of Sections 1125 and 1126. Specifically, in the Disclosure
27 Statement Order, the Court ruled that the Disclosure Statement satisfied the requirements of section
28 1125(b). Dkt. No. 1874 at ¶4. On July 29, 2016, the City served by mail the following Solicitation

1 Materials on all parties entitled to vote on the Plan: (a) a cover letter; (b) a CD that contained the Plan,
2 the Disclosure Statement, the Appendix of Exhibits, the Disclosure Statement Order and the Notice of
3 Voting Procedures (the “CD”); (c) the “Notice of: (1) October 14, 2016 Hearing to Consider
4 Confirmation of ‘Third Amended Plan for the Adjustment of Debts of the City of San Bernardino,
5 California (July 29, 2016)’; (2) September 2, 2016 Deadline for Filing Objections to Confirmation of the
6 Third Amended Plan; (3) Other Deadlines; and (4) Effect of Confirmation of the Plan (the
7 “Confirmation Hearing Notice”); (d) a Ballot and a preaddressed return envelope (postage prepaid), and
8 (e) for some voters, one of the following notices: a letter from the Official Retiree Committee to holders
9 of Retiree Health Benefit Claims; a notice to the holders of 1996 Refunding Bonds and 1999 Refunding
10 Certificates of Participation; or a notice to holders of Litigation Claims regarding certain insurance
11 coverage issues (the “Notice to Holders of Litigation Claims”).

12 12.4.2. The Solicitation Materials were sent to all eligible voters deemed to be
13 holders of allowed claims for voting purposes. Under the Voting Procedures, that meant all creditors
14 whose claims were listed in the City’s schedules as not disputed, contingent or unliquidated, or who
15 filed proofs of claim. Thus, the City complied with the requirements of Sections 1125 and 1126. Also
16 on July 29, 2016, the City sent copies of the CD and the Confirmation Hearing Notice to all known
17 creditors of the City and all other parties in interest that had requested notice. This mailing to all known
18 creditors also included, for holders of Litigation Claims, the Notice to Holders of Litigation Claims. *See*
19 *generally* Notice of Materials Distributed to Creditors in Connection With the Hearing on Confirmation
20 of the City’s Chapter 9 Plan of Adjustment of Debts (Dkt. No. 1883), filed on July 29, 2016; *see also*
21 *Ballot Tabulation* at ¶8. The City also published the Confirmation Hearing Notice in two local
22 newspapers, the San Bernardino County Sun and the Riverside Press Enterprise.

23 12.4.3. Service of the Solicitation Materials satisfied the requirements of:

24 12.4.3.1. Bankruptcy Rules 2002 and 3016, including that the Plan at
25 Article XI, and the Disclosure Statement at Article VI.G., describe in specific and conspicuous language
26 (bold, italic, or underlined text) all acts to be enjoined by, and identify the entities that would be subject
27 to, the third party injunction provisions of Article XI of the Plan (the “Plan Injunction”). Article VI.G.7.
28 of the Disclosure Statement also describes the City’s reasons for the necessity of the Plan Injunction.

1 12.4.3.2. Bankruptcy Rule 3017, including that the Court set
2 deadlines for accepting or rejecting the Plan and filing objections to the Plan, and such deadlines were
3 prominently displayed in the Solicitation Materials, that the Solicitation Materials included all
4 documents required to be distributed to creditors in connection with a plan confirmation hearing, and
5 that creditors received the Solicitation Materials with at least 28 days notice for filing objections as
6 required by Bankruptcy Rule 3017(f) with respect to the Plan Injunction.

7 12.4.3.3. Bankruptcy Rule 3018, because the Solicitation Materials
8 were distributed to all creditors eligible to vote on the Plan and in accordance with the specific
9 requirements of the Disclosure Statement Order, using forms of ballots approved by the Court in the
10 Disclosure Statement Order.

11 12.4.3.4. Bankruptcy Rule 3019, because the City gave adequate
12 notice of the Plan Modifications, no creditor except BICEP objected to the Plan Modifications, and
13 BICEP's objections were consensually resolved (*see* Dkt. No. 2096), and the Court has determined that
14 the Plan Modifications do not adversely change the treatment of any claim.

15 12.4.3.5. Bankruptcy Rule 3020, because the Court scheduled the
16 Confirmation Hearing and set a deadline for filing objections to confirmation of the Plan, and adequate
17 notice thereof was given to all known creditors of the City, including adequate notice of the terms of the
18 Plan Injunction, as required in Bankruptcy Rules 2002, 3016 and 3017; the Court is entering this
19 Confirmation Order after the conclusion of the Confirmation Hearing; and this Confirmation Order
20 describes in specific detail the terms of the Plan Injunction and all acts to be enjoined pursuant to the
21 Plan Injunction, and identifies the entities subject to the Plan Injunction.

22 12.4.3.6. Thus, the City complied with all of the requirements of
23 Section 1129(a)(2).

24 12.5. Plan Proposed in Good Faith and Not by Any Means Prohibited by Law
25 (11 U.S.C. § 1129(a)(3)).

26 12.5.1. Section 1129(a)(3) requires that a plan be proposed in good faith and not
27 by any means forbidden by law. The determination of what constitutes good faith is based upon the
28 totality of the circumstances in a particular case and is a very fact-dependent exercise. *Franklin High*

1 *Yield Tax-Free Income Fund et al. v. City of Stockton, California (In re City of Stockton, California)*,
2 542 B.R. 261, 228-79 (B.A.P. 9th Cir. 2015). “In order to satisfy the statutory requirement of good
3 faith, a plan must be intended to achieve a result consistent with the objectives of the Bankruptcy Code.”
4 *In re Corey*, 892 F.2d 829, 835 (9th Cir. 1989) (citing *Stolrow v. Stolrow’s, Inc. (In re Stolrow’s, Inc.)*,
5 84 Bankr. 167, 172 (Bankr. 9th Cir. 1988) and *Jorgensen v. Federal Land Bank of Spokane (In re*
6 *Jorgensen)*, 66 Bankr. 104, 108-09 (Bankr. 9th Cir. 1986)). The principal purpose of chapter 9 “is to
7 allow an insolvent municipality to restructure its debts in order to continue to provide public services.”
8 *In re Mount Carbon Metro. Dist.*, 242 B.R. 18, 41 (Bankr. D. Colo. 1999). An overarching goal of
9 chapter 9 is to relieve the municipality’s residents from the effects of further declining services caused
10 by the enormity of the claims pending against a city, by restructuring that debt. *Collier* ¶ 943.03[7][a].

11 12.5.2. Based on the record of this Bankruptcy Case, the City has demonstrated
12 that its primary objective in proposing the Plan is to restructure its debts and continue providing services
13 to its residents, and the Plan achieves precisely that result. The City has remained open and honest at all
14 stages of the Bankruptcy Case regarding its motivations for structuring the Plan, particularly the need to
15 improve the level of municipal services delivered to its residents generally (and in particular to rebuild
16 the San Bernardino Police Dept.) within a reasonable period of time, and the consequent inability of the
17 City to fund significant recoveries for creditors.

18 12.5.3. The Plan satisfies the good faith standard. Ever since the City filed its
19 petition for relief under chapter 9, the City’s actions have demonstrated good faith. In its opinion
20 decreeing that the City was eligible for relief under chapter 9, after a comprehensive review of the facts,
21 the Court determined that the City commenced its chapter 9 case with the desire to restructure debt and
22 effect a plan of adjustment, and the “steps taken after the petition date show that the City began
23 implementation of the steps necessary to restructure its debt.” *In re City of San Bernardino*, 499 B.R.
24 776, 787-88 (Bankr. C.D. Cal. 2013). The Court added: “The City’s financial problems fall within the
25 situations contemplated by chapter 9. Here, the City cannot achieve a balanced budget unless it is
26 allowed to reorganize its debt. The City cannot keep current with its mounting obligations because it is
27 insolvent. The City’s filing is consistent with the purposes of chapter 9, which is to give a debtor a
28 ‘breathing spell’ so that it may establish a plan of adjustment.” *Id.* at 790. Ever since the Court gave the

1 City that breathing spell, the City’s management team and its outside professionals have devoted
2 thousands of hours to negotiating with the City’s creditors, largely facilitated by Judge Zive’s mediation
3 efforts, to reach settlements with the creditor constituencies. Those settlements have been entered into
4 with CalPERS, the Official Retiree Committee, the holders of the PARS Claims, the SBPOA (the police
5 officers union), the SBCPF (the firefighters union), all other City employee unions, the holders of the
6 1996 Refunding Bond Claims and the 1999 Refunding Certificates of Participation Claims, the POB
7 Creditors, and all secured creditors of the City.¹³ The success of those settlements is evidenced by the
8 fact that all impaired classes of creditors voted to accept the Plan, by wide margins. Even Class 13 – the
9 class receiving a 1% distribution – voted to accept the Plan, with more than 95% in dollar amount and
10 number of votes cast voting to accept the Plan. The City’s almost completely successful effort to
11 replace confrontation with consensus provides ample evidence for this Court to conclude that the Plan
12 was proposed with honesty and good intentions, and in good faith. The Plan, the Plan Injunction and the
13 treatment of claims are, and the process pursuant to which the City has sought confirmation of the Plan
14 has been, fundamentally fair to the City’s creditors.

15 12.5.4. The unrefuted evidence shows that the City is not able to pay more than
16 1% on its more that \$209 million in unsecured claims, without placing in jeopardy the feasibility of the
17 Plan and the City’s return to service solvency. The City has also submitted unrefuted evidence that it
18 must dedicate much of its limited resources to its Police Resources Plan. The City is a high crime area,
19 yet most of the City’s fleet of police vehicles are beyond their scheduled service life, much of the Police
20 Department’s technology is severely out of date, and the Police Department is severely understaffed due
21 to the City’s financial crisis. Investing in police safety is properly a critical part of the Plan and a key to
22 economic growth. The City’s proposal to use its limited income for upgrading the safety of the City’s
23 communities reflects the good faith of the City. So too, that the City has proposed to treat substantially
24 all unsecured creditors equally in terms of the 1% distribution, and that substantially all creditors are

26 ¹³ See *Franklin High Yield Tax-Free Income Fund et al. v. City of Stockton, California (In re City of*
27 *Stockton, California)*, 542 B.R. 261 (B.A.P. 9th Cir. 2015) (“At the outset the record reflects that the
28 Plan was the product of extended negotiations . . . resulting in multiple collective bargaining agreements
and settlements with creditor constituencies.”).

1 consenting (not having objected) to “share the pain” equally, also is evidence that this Plan has been
2 proposed in good faith.

3 12.5.5. Thus, the City has satisfied the good faith requirement of Section
4 1129(a)(3).

5 12.5.6. The Plan also has not been proposed by any means forbidden by law.
6 As provided in Article VII.A. of the Plan, the City will implement the Plan by continuing to operate
7 pursuant to its Charter, the California Constitution, and applicable state and federal laws.

8 12.5.7. One of the Objections to confirmation of the Plan argued that the Plan
9 Injunction contravenes the Anti-Injunction Act. The Anti-Injunction Act provides that “[a] court of the
10 United States may not grant an injunction to stay proceedings in a State court except as expressly
11 authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its
12 judgments.” 28 U.S.C. § 2283. The Anti-Injunction Act prohibits courts of the United States¹⁴ from
13 enjoining state court proceedings except in three situations: (i) if expressly authorized by an Act of
14 Congress, or (ii) where necessary in aid of its jurisdiction or (iii) to protect or effectuate its judgments.

15 12.5.8. Section 105(a) is an expressly authorized exception to the Anti-
16 Injunction Act, and Section 105(a) authorizes the Bankruptcy Court to stay proceedings in state courts.
17 *Si Yeon Park v. State Street Bank & Trust Co. (In re Si Yeon Park)*, 198 B.R. 956, 967 (Bankr. C.D. Cal.
18 1996). The basic purpose of Section 105(a) is to enable the bankruptcy court to do whatever is necessary
19 to aid its jurisdiction, i.e., anything arising in or relating to a bankruptcy case. *Id.*; *see also, Parker v.*
20 *Goodman (In re Parker)*, 499 F.3d 616, 627 (6th Cir. 2007) (“Courts have widely affirmed that the
21 expressly authorized exception to the Anti-Injunction Act includes injunctions authorized under the
22 bankruptcy laws. Section 105 includes the authority to enjoin litigants from pursuing actions pending in

23 _____
24 ¹⁴ Courts have held that the bankruptcy courts are not “courts of the United States” and thus the Anti-
25 Injunction Act does not apply in bankruptcy court. *See In re G.S.F. Corp.*, 938 F.2d 1467, 1477 (1st Cir.
26 1991); *see also In re Perroton*, 958 F.2d 889 (9th Cir. 1992) (bankruptcy court not “court of the United
27 States” for purposes of 28 U.S.C. § 1915 and thus not authorized to waive filing fees). In *G.S.F.*, the
28 First Circuit held that, “[b]y its terms, the Anti-Injunction Act does not govern bankruptcy courts. Its
provisions restrict only the ‘courts of the United States’ defined as including ‘the Supreme Court of the
United States, courts of appeals, district courts constituted by chapter 5 of this title including the Court
of International Trade and any court created by Act of Congress the judges of which are entitled to hold
office during good behavior.” *Id.* (quoting 28 U.S.C. § 451).

1 other courts that threaten the integrity of a bankrupt’s estate. . . . [Section 105] provides an ‘expressly
2 authorized’ exception to the Anti-Injunction Act.”); *Alard v. Weitzman (In re DeLorean Motor Co.)*, 991
3 F.2d 1236, 1242 (6th Cir. 1993) (“Section 105(a) contemplates injunctive relief in precisely those
4 instances where parties are pursuing actions pending in other courts that threaten the integrity of a
5 bankrupt’s estate.” (internal quotation marks omitted)); *Unencumbered Assets Trust v. Hampton-Stein*
6 *(In re Nat’l Century Fin. Enters.)*, 407 B.R. 895, 900 (Bankr. S.D. Oh. 2009) (Anti-Injunction Act does
7 not prevent court from enjoining state court action). The Bankruptcy Appellate Panel for the Ninth
8 Circuit summed it up this way:

9 The legislative history of § 105(a) clearly indicates that this provision was intended to be a
10 statutory exception to the Anti-Injunction Act, 28 U.S.C. 2283, which provides that “a
11 court of the United States may not grant an injunction to stay proceedings in a State court
12 *except as expressly authorized by Act of Congress*, or where necessary in aid of its
13 jurisdiction, or to protect or effectuate its judgments.” 28 U.S.C. § 2283 (1994) (emphasis
14 added). *See* H.R. Rep. No. 95-959, 95th Cong., 1st Sess., at 316-17 (1977), *reprinted in*,
1978 *U.S.C.C.A.N.* 5787, 5815 (stating that § 105 is “an authorization, as required under
28 USC 2283, for a court of the United States to stay the action of a State court”); S. Rep.
No. 989, 95th Cong., 2d Sess., at 29 (1978) (same).

15 *Huse v. Huse-Sporssem (In re Birthing Fisheries, Inc.)*, 300 B.R. 489, 497 n.7 (B.A.P. 9th Cir. 2003).

16 Therefore, the Anti-Injunction Act does not apply to prohibit the Plan Injunction.

17 12.5.9. Another Objection to confirmation of the Plan, citing the U.S. Supreme
18 Court’s decision in *Law v. Siegel*, 134 S. Ct. 1188 (2014), argued that the Plan violates Bankruptcy
19 Code Section 524(e) and circumvents the statutory scheme of 42 U.S.C. § 1983. *Law v. Siegel* held that
20 a bankruptcy court has statutory authority under Section 105(a) to issue any order, process, or judgment
21 that is necessary or appropriate to carry out the provisions of the Bankruptcy Code, except when doing
22 so overrides explicit mandates of other sections of the Bankruptcy Code. 134 S. Ct. at 1194.¹⁵ Here, the

23 _____
24 ¹⁵ Courts have rejected attempts to expand *Law v. Siegel* beyond the holding that Section 105(a) cannot
25 contravene explicit provisions of the Bankruptcy Code. *See e.g., Clark’s Crystal Springs Ranch, LLC v.*
26 *Gugino (In re Clark)*, 548 B.R. 246, 252-53 (B.A.P. 9th Cir. 2016) (holding that *Law v. Siegel* does not
27 prevent Section 105(a) substantive consolidation order); *Redmond v. Jenkins (In re Alternate Fuels,*
28 *Inc.)*, 789 F.3d 1139, 1149 (10th Cir. 2015) (holding *Law v. Siegel* does not prevent a court from
recharacterizing debt as equity because “*Law* held simply that a court may not employ § 105(a) to
override other explicit mandates in the Bankruptcy Code.”); *Official Comm. of Unsecured Creditors of*
SGK Ventures, LLC v. NewKey Group, LLC (In re SGK Ventures, LLC), 521 B.R. 842, 848-49 (Bankr.
N.D. Ill. 2014) (ruling that *Law v. Siegel* does not limit trustee derivative standing, because “[t]here is no

1 Plan does not violate Section 524(e) because Section 524(e) does not apply in chapter 9. *See* Sections
2 103)(f) and 901 (delineating which sections of the Bankruptcy Code apply in chapter 9, and expressly
3 excluding 524(e)); *Deocampo v. Potts*, 836 F.3d 1134, 1143 (9th Cir. 2016)) (“Chapter 9, unlike
4 Chapter 11, does not incorporate Section 524(e)”). The Plan also does not circumvents the statutory
5 scheme of 42 U.S.C. § 1983 because § 1983 claims are dischargeable in bankruptcy cases, including in
6 chapter 9 cases (*see* findings and conclusions at ¶¶ 12.1.6 through 12.19, *supra*), just as claims arising
7 under other federal statutory schemes may be impaired and discharged under bankruptcy plans (*e.g.*,
8 certain environmental, collective bargaining agreement and tax claims). Accordingly, the Objection to
9 confirmation of the Plan based upon *Law v. Siegel* is overruled.

10 12.5.10. Accordingly, the Plan has been proposed in good faith and not by
11 means forbidden by law and the City has satisfied the requirements of Section 1129(a)(3).

12 12.6. Regulatory Approval of Rate Changes (11 U.S.C. § 1129(a)(6)). The City is not
13 subject to any governmental rate-setting commission, and section 1129(a)(6) is therefore not applicable.
14 Nevertheless, it is worth noting that the Article XII.B.4. of the Plan provides that it shall be a condition
15 to the occurrence of the Effective Date of the Plan that “[t]he City shall have received any and all
16 authorizations, consents, regulatory approvals, rulings, no-action letters, opinions, and documents that
17 are necessary to implement this Plan and that are required by law, regulation or order.”

18 12.7. Acceptance of Plan by all Impaired Classes of Claims (11 U.S.C. § 1129(a)(8)).
19 Classes 3, 4, 7 and 8 are unimpaired under the Plan. Therefore, these classes are deemed to have
20 accepted the Plan. 11 U.S.C. § 1126(f). Classes 1, 2, 5, 6, 9, 12, 13 and 14 (and Classes 10 and 11 that
21 are incorporated into Class 13) are impaired under the Plan and entitled to vote. The Ballot Tabulation
22 shows that each such impaired class voted overwhelmingly to accept the Plan. Thus, the Plan complies
23 with the requirement set forth in section 1129(a)(8).

24 12.8. Acceptance of Plan by at Least One Impaired Class of Claims (11 U.S.C. §
25 1129(a)(10)). Section 1129(a)(10) requires that at least one class of claims that is impaired under the

26
27 provision of the Bankruptcy Code prohibiting a grant of derivative trustee standing, and so *Law* has no
28 bearing here.”); *In re Sunland, Inc.*, 2014 Bankr. LEXIS 5000, at *14 (Bankr. D.N.M. Dec. 11, 2014)
(*Law v. Siegel* does not prevent bankruptcy court from issuing a channeling injunction).

1 Plan accept the Plan, determined without including acceptances of the Plan by any insider. Each of
2 impaired classes 1, 2, 5, 6, 9, 12, 13 and 14 voted to accept the Plan. Thus, the Plan satisfies Section
3 1129(a)(10).

4 13. Plan Compliance With Section 943(b)(2). Section 943(b)(2) requires that the Plan
5 comply with the plan confirmation requirements expressly provided in chapter 9. As discussed above,
6 the Plan complies with the requirements of Section 941 and 942. The Plan's compliance with the
7 remaining requirements of Section 943 is discussed below.

8 14. Disclosure and Reasonableness of Amounts to be Paid by the City for Services or
9 Expenses in the Case or Incident to the Plan (11 U.S.C. § 943(b)(3)). The City represented that it has
10 been paying its professionals and those of the Official Retiree Committee in the ordinary course, and
11 that there are no outstanding unpaid costs and expenses that fall within the ambit of Section 943(b)(3).
12 Therefore, the City has complied with the requirements of Section 943(b)(3).

13 15. Plan Compliance With Section 943(b)(4).

14 15.1. Section 943(b)(4) prevents confirmation of a plan of adjustment that requires the
15 debtor to take any action prohibited by law. This section is intended to prevent chapter 9 debtors from
16 using chapter 9 cases for the purpose of circumventing compliance with state law after confirmation.
17 *See In re Sanitary & Improvement Dist. No. 7*, 98 B.R. 970 (Bankr. D. Neb. 1989); *Collier* ¶ 943.03[4].
18 The Plan provides that the City will comply with all laws, regulations, and ordinances following
19 confirmation, and nothing in the Plan proposes an action in violation of existing applicable laws. For
20 example, (1) the Plan makes clear that funds restricted to certain uses by applicable non-bankruptcy law
21 would not and cannot be used to pay General Fund obligations; (2) the Plan provides that the City will
22 comply with all laws and regulations applicable to its obligations to CalPERS; and (3) the Plan provides
23 that the City will continue to cooperate with the County in implementing the annexation of the City into
24 the County Fire District in accordance with the annexation approval requirements of the Local Agency
25 Formation Commission for San Bernardino County ("LAFCO").

26 15.2. The City also is not using the Plan to shirk its statutory obligations under
27 Government Code §§ 825, 825.2, 995 and 996.4 to indemnify City employees for judgments and costs
28 of defense of such employees incurred in lawsuits based upon pre-Confirmation Date acts or omissions

1 of such employees that arose within the scope of their employment (indeed, the Plan was modified to
2 expressly so provide, *see* discussion of Plan Modifications, *supra*; *see also* discussion of City’s statutory
3 indemnification obligations *infra*). Therefore, the Plan complies with the requirement of Section
4 943(b)(4).

5 16. Payment of Administrative Claims (11 U.S.C. § 943(b)(5)).

6 16.1. The Plan satisfies the requirements of Section 943(b)(5) because the Plan
7 expressly provides for the cash payment, in full, of Allowed Administrative Claims, including
8 administrative expenses allowed under section 503(b) of the Bankruptcy Code, either (1) on the
9 Effective Date or as soon as reasonably practicable thereafter or (2) if the Administrative Claim is not
10 Allowed as of the Effective Date, 30 days after the date on which such Administrative Claim becomes
11 an Allowed Claim. The Plan provides at Articles I.B.16. and II.A, and the City argued in the
12 Memorandum at Section III(B)(3), that Administrative Claims in this Bankruptcy Case means the costs
13 or expenses of administration of the Bankruptcy Case, and are limited to claims arising under Section
14 503(b)(3)(D) and (F), and 503(b)(4) and (b)(5), which are claims for: making a substantial contribution
15 in the chapter 9 case, expenses of official committee members incurred in the performance of their
16 duties, and reasonable compensation for attorneys or accountants working for parties making a
17 substantial contribution to the chapter 9 case.¹⁶ If such claims are allowed, they will be paid under the
18 Plan as Administrative Expenses. Otherwise, all other post-petition claims against the City are classified
19 as Other Post-petition Claims, which are included in Class 13 General Unsecured Claims and receive the
20 treatment afforded Class 13 Claims, including claims that creditors may assert are post-petition claims
21 under Section 503(b)(1)(A), *i.e.*, the “actual, necessary costs and expenses of preserving the estate.”

22 16.2. The Plan’s treatment of claims asserted under Section 503(b)(1)(A) as Class 13
23 Other Post-petition Claims, rather than as expenses entitled to administrative claim priority, is based
24 upon the City’s position that there are no Section 503(b)(1)(A) claims in a chapter 9 case because there
25 is no estate in a chapter 9 case. *See e.g., Diamond Z Trailer, Inc. v. JZ L.L.C. (In re JZ L.L.C.)*, 371 B.R.

26
27 ¹⁶ The City acknowledged in the Memorandum that claims arising under Sections 503(b)(7), (8) and (9)
28 may be allowable administrative expenses in this chapter 9 case but the City stated there are no such
claims pending against the City.

1 412, 419 n.4 (B.A.P. 9th Cir. 2007); *In re City of Vallejo*, 403 B.R. 72, 78, n.2 (Bankr. E.D. Cal. 2009);
2 *In re Jefferson County, Ala.*, 484 B.R. 427, 460-61 (Bankr. N.D. Ala. 2012). There can be no
3 “necessary costs and expenses of preserving the estate” in a case where no estate exists. *In re New York*
4 *City Off-Track Betting Corp.*, 434 B.R. 131, 142 (Bankr. S.D.N.Y. 2010). Statutes allowing
5 administrative priorities in bankruptcy “must be tightly construed.” *Howard Delivery Serv. v. Zurich*
6 *Am. Ins. Co.*, 547 U.S. 651, 667, 126 S. Ct. 2105, 2116 (2006). “[I]f one claimant is to be preferred over
7 others, the purpose should be clear from the statute.” *Id.* “We take into account, as well, the
8 complementary principle that preferential treatment of a class of creditors is in order only when clearly
9 authorized by Congress. *Id.* at 655. Administrative expenses are narrowly construed in chapter 9 cases.
10 *In re Orange County*, 179 B.R. 195, 201 (Bankr. C.D. Cal. 1995). None of the Objections refuted the
11 City’s argument and therefore the court did not explicitly rule on this issue.

12 16.3. The scope of administrative claims in chapter 9 cases was the subject of disputes
13 in earlier stages of the Bankruptcy Case, but those disputes were all resolved without the Court having to
14 address the proper treatment of Section 503(b)(1)(A) claims in chapter 9. The Court is again not called
15 upon to resolve the dispute because there is none. No creditor filed an objection to the Plan’s exclusion
16 of Section 503(b)(1)(A) claims from Administrative Claim classification and treatment. Under those
17 circumstances, the Court finds that the Plan complies with the requirements of Section 943(b)(5).

18 17. Regulatory or Electoral Approvals (11 U.S.C. § 943(b)(6)). Section 943(b)(6) requires
19 that any regulatory or electoral approval necessary under applicable non-bankruptcy law in order to
20 carry out any provision of the plan has been obtained, or such provision is expressly conditioned on such
21 approval. Article XIII.B.4. of the Plan expressly provides that a condition precedent to the Effective
22 Date is that the “City shall have received any and all authorizations, consents, regulatory approvals,
23 rulings, no-action letters, opinions, and documents that are necessary to implement this Plan and that are
24 required by law, regulation or order.” The City needed and obtained the agreement of the County and
25 the approval of LAFCO for the annexation of the City into the County Fire District. No other regulatory
26 or electoral approvals are required to carry out the provisions of the Plan. Thus, the Plan satisfies the
27 requirements of Section 943(b)(6).

28 18. Best Interests of Creditors; Feasibility of Plan (11 U.S.C. § 943(b)(7)).

1 18.1. Best Interests of Creditors.

2 18.1.1. Unlike the best interests test under chapter 11, where the plan proponent
3 is obligated to show that each objecting creditor will receive under the plan at least as much as the
4 creditor would receive in a chapter 7 liquidation, no such comparison is available in chapter 9 because
5 municipalities cannot be liquidated. Therefore, the best interests test in chapter 9 compares what
6 creditors as a group receive under the plan, compared to what each creditor individually could achieve if
7 the Bankruptcy Case were dismissed. As the Ninth Circuit B.A.P. has explained it: “By their terms, the
8 ‘best interests’ tests in chapters 9 and 11 are different, and only in chapter 11 is particular consideration
9 of the best interests of individual creditors specified. By its terms, the ‘best interests’ test in chapter 9 is
10 collective rather than individualized, and that interpretation is supported by the very context of chapter
11 9.” *Franklin High Yield Tax-Free Income Fund et al. v. City of Stockton, California (In re City of*
12 *Stockton, California)*, 542 B.R. 261, 283 (B.A.P. 9th Cir. 2015). The B.A.P. added: “We conclude that
13 the ‘best interests’ test in chapter 9 considers the collective interests of all concerned creditors in a
14 municipal plan of adjustment rather than focusing on the claims of individual creditors.” *Id.* at 286.

15 18.1.2. In determining if the Plan is in the collective best interests of all
16 creditors, a court is required to determine whether or not the plan as proposed is better than the
17 alternatives. *See In re Sanitary & Improvement Dist., No. 7*, 98 B.R. 970, 974 (Bankr. D. Neb. 1989).
18 Since liquidation of a municipality is not contemplated under chapter 9, and dismissal of a chapter 9
19 case is the only real alternative to confirmation of a plan, a court is required to determine whether the
20 chapter 9 plan is a better alternative for creditors than dismissal of the case. *Cnty. of Orange v. Merrill*
21 *Lynch & Co. (In re Cnty. of Orange)*, 191 B.R. 1005, 1020 (Bankr. C.D. Cal. 1996); *Collier* ¶ 943.03[7].

22 18.1.3. The Plan is in the best interests of creditors. The Plan provides the
23 City’s creditor body, as a whole, with a better alternative than dismissal of the Bankruptcy Case and all
24 that creditors can reasonably expect under the circumstances.¹⁷ Since liquidation is not an alternative,

25 ¹⁷ *See, e.g., West Coast Life Ins. Co. v. Merced Irr. Dist.*, 114 F.2d 654, 679 (9th Cir. 1940) (affirming
26 confirmation of plan under municipal debtor provisions of Bankruptcy Act of 1898 when the plan
27 payments were “all that could reasonably be expected in all the existing circumstances”); *Lorber v. Vista*
28 *Irr. Dist.*, 127 F.2d 628, 639 (9th Cir. 1942) (the test for the fairness of a chapter 9 plan is whether the
creditors receive all that they can reasonably expect in the circumstances), *cert. denied* 323 U.S. 784, 65
S. Ct. 270 (1944).

1 the only alternative to confirmation of the Plan is dismissal of the case altogether, leaving creditors to
2 race to the state and federal courts. The result would be chaos because the creditors, of which there are
3 thousands, would be required to fend for themselves in a mad scramble to litigate their claims in the
4 state and federal courts. As the U.S. Supreme Court held in the chapter 9 case of *Faitoute Iron & Steel*
5 *Co. v. City of Asbury Park*, 316 U.S. 502, 510, 62 S. Ct. 1129, 1134 (1942), this “policy of every man
6 for himself is destructive of the potential resources upon which rests the taxing power which in actual
7 fact constitutes the security for unsecured obligations outstanding to a city.” The race to the courthouse
8 is certainly not a viable alternative. “The experience of the two modern periods of municipal defaults,
9 after the depressions of ‘73 and ‘93, shows that the right to enforce claims against the city through
10 mandamus is the empty right to litigate.” *Id.*, 316 U.S. at 510, 62 S. Ct. at 1133.

11 18.1.4. In the City’s case, dismissal would result in the City being flooded with
12 litigation from creditors with whom the City has achieved settlement agreements that are tied to
13 confirmation of the Plan; settlements with: secured bondholders and other secured creditors, the POB
14 Creditors, the PARS claimants, the SBCPF, SBPOA and the other employee unions, the Official Retiree
15 Committee and CalPERS. Massive litigation costs would burden the City, its creditors, and all parties in
16 interest, although creditors financially equipped to pursue litigation most quickly (and thus win “the race
17 to the courthouse”) would benefit disproportionately. But even the swiftest of creditors would likely
18 find its ability to collect on a judgment stymied by the inability of the City to pay such judgments
19 without violating provisions of the California Constitution that restrict payment of General Fund
20 obligations with Restricted Funds. In short, dismissal of the chapter 9 case would result in chaos, with
21 few if any creditors emerging safely from the blizzard of inevitable litigation. The City, its residents and
22 its creditors cannot afford to be left in such a circumstance. Confirmation of the Plan is in the best
23 collective interests of the City’s creditors. All creditors are better off under the Plan, even with the 1%
24 distribution, than they would be in the chaos that could ensue upon dismissal of the chapter 9 case.

25 18.1.5. Earlier in the Bankruptcy Case in connection with the approval of the
26 Disclosure Statement, a creditor argued the City should liquidate assets to pay claims. However, as the
27 City demonstrated in the course of the proceedings on the adequacy of the Disclosure Statement,
28 substantially all of the City’s public use properties are either vital to the operation of the City (*e.g.*, the

1 police headquarters building) or have such distressed value that they have little financial value to
2 creditors other than as public use facilities. The same is true for City owned equipment. *See generally*
3 Article IV.B. of the Disclosure Statement, “City Assets,” and the documents in the Appendix of Exhibits
4 referred to in Article IV.B. The City has demonstrated that the sale of City assets would not materially
5 increase the funds available to pay creditor claims.

6 18.1.6. Even if, hypothetically, a sale of public use facilities like libraries, parks,
7 youth centers and sports facilities would generate some financial value, such sale would reduce the
8 provision of vital public services to the City’s residents, particularly to the City’s poorest residents who
9 cannot afford alternative private sector for-profit facilities. The City is entitled to make the political and
10 governmental decisions to retain such public facilities, as it is well accepted that a chapter 9 debtor
11 cannot be compelled to liquidate assets. *See Silver Sage Partners, Ltd. v. City of Desert Hot Springs (In*
12 *re City of Desert Hot Springs)*, 339 F.3d 782, 789 (9th Cir. 2003) (Chapter 9 makes no provision for
13 conversion of the case to another chapter or for an involuntary liquidation of any of the debtor’s assets);
14 *Newhouse v. Corcoran Irr. Dist.*, 114 F.2d 690, 691 (9th Cir. 1940) (chapter 9 debtor’s property cannot
15 be disposed of as in an ordinary business bankruptcy proceeding); *Lorber v. Vista Irr. Dist.*, 127 F.2d
16 628, 637 (9th Cir. 1942) (same).

17 18.1.7. The Plan satisfies the best interests test because confirmation of the Plan
18 is a better result for creditors than dismissal of the Bankruptcy Case, asset sales are not a viable or legal
19 option, and the Plan is fair and equitable in the non-bankruptcy sense because creditors are receiving all
20 that they can reasonably expect in the circumstances.

21 18.2. Feasibility of the Plan.

22 18.2.1. A chapter 9 plan is feasible if it shows that the debtor can make the
23 payments promised under the plan and maintain post-confirmation operations. *Collier* ¶ 943.03[7][b].
24 For the Court to find that the City’s Plan is feasible, the City need not prove that success is guaranteed;
25 rather, it must establish that the assumptions and projections underlying the Plan are reasonable and that,
26 as a result the Plan is more likely than not to succeed. *See e.g. Prime Healthcare Mgmt., Inc. v. Valley*
27 *Health Sys. (In re Valley Health Sys.)*, 429 B.R. 692, 711 (Bankr. C.D. Cal. 2010) (chapter 9 plan is
28 feasible if “it offers a reasonable prospect of success and is workable”). To prove that the Plan is

1 feasible, the City must show that the City will be able to both maintain municipal services at the level it
2 deems necessary to the continued viability of the City and make the payments set forth in the Plan. *See*,
3 *Mount Carbon*, 242 B.R. at 34-35; *In re Corcoran Hosp. Dist.*, 233 B.R. 449, 453-54 (Bankr. E.D. Cal.
4 1999) (finding that chapter 9 plan was feasible based on reliable testimony that the debtor would be able
5 to make the payments provided under the plan and that the plan was based on reasonable projections of
6 future income and expenses); *In re Connector 2000 Ass'n*, 447 B.R. 752, 765-66 (Bankr. D.S.C. 2011)
7 (chapter 9 plan was feasible based on reasonable projections regarding debtor's ability to make
8 payments under the plan).

9 18.2.2. The Plan is feasible because it is more likely than not that the City will
10 be able to (a) make all payments contemplated by the Plan without a significant probability of default
11 and (b) sustainably provide adequate municipal services to its residents. Therefore, the City has
12 demonstrated a reasonable prospect that the City will successfully implement the Plan. The City's
13 Financial Model, which is attached to the Declaration of Michael Busch, projects, over a 20-year post-
14 Confirmation Date period, revenues and expenditures, anticipated cost savings and future revenue
15 enhancement actions necessary for the City to remain cash and budget solvent while providing an
16 adequate level of basic services to the City's residents. It also budgets funds for road and street
17 maintenance and repair, building upgrades, parks, libraries, community centers, the Police Resources
18 Master Plan and other essential services which have been neglected for a long time due to the lack of
19 funds. *See* Busch Declaration at ¶7.

20 18.2.3. According to Mr. Busch, the City must restructure its debts through the
21 Plan in order to continue as a viable municipality and provide basic essential services to the City's
22 residents. Without restructuring its debts through the Plan, the City will operate at a deficit within a few
23 years after exiting bankruptcy. *Id.* at ¶8. With the adjustment of debts proposed under the Plan, the City
24 will emerge from bankruptcy protection as a viable municipal service provider for its residents *Id.* at
25 ¶14. The Busch testimony was uncontroverted by any creditor in the case, including those creditors like
26 the bondholders that had engaged nationally-known financial advisory firms to review the City's
27 finances and financial wherewithal. The projections in the Financial Model are reasonable and
28 appropriate regarding the ability of the City to generate the monies necessary to fund the Plan and

1 provide basic essential services to its residents. Therefore, the Plan is feasible for the purposes of
2 Section 943(b)(7).

3 19. Article XI of the Plan; the Plan Injunction. Other than with respect to the terms of the
4 Plan Injunction (separately discussed below), the discharge, release, injunction, stay and settlement
5 provisions of Articles XI.A., XI.B, XI.C., XI.D. and XI.F. are standard plan provisions and no creditor
6 or other party in interest objected to the terms of such provisions. The exculpation provision of Article
7 XI.E of the Plan complies with applicable law and is appropriate. Such provision contains a carve-out
8 for gross negligence and willful misconduct and is limited to claims arising out of the City's
9 restructuring efforts and the Bankruptcy Case. In addition, the Plan's exculpation provision extends only
10 to parties who either have settled with the City or have actively participated in the City's restructuring
11 activities. No creditor or other party in interest objected to the exculpation provisions of Article XI.E.

12 19.1. City's Statutory Obligation to Pay the Judgments Against its Employees

13 19.1.1. The Plan Injunction arises from the City's state law obligations under
14 California Government Code §§ 825, 970, 995 and 996 to indemnify its employees for judgments
15 against the employees based upon employee acts or omissions arising within the scope of employment,
16 and which act or omission was not due to actual malice, actual fraud or corruption (acts or omissions
17 outside the scope of employment, or due to actual malice, actual fraud or corruption, are referred to as
18 the "Exceptions"). Thus, subject to the Exceptions, the City is obligated to pay the debts created by
19 entry of judgments against its employees. Pursuant to Government Code § 970.2, a court may issue a
20 writ of mandate to compel the City to pay a judgment against one of its employees based on acts or
21 omissions within the scope of employment. The statutory scheme imposes this duty on the City to
22 ensure the "the zealous execution of official duties by public employees." *Johnson v. California*, 69
23 Cal. 2d 782, 792 (1968).

24 19.1.2. The City's obligation to indemnify typically arises in two circumstances.
25 The first and most common circumstance is where the City assumes the defense of the employee at an
26 initial stage of the lawsuit, well before a judgment is issued. Government Code § 995 requires the City
27 to assume the defense unless one of the Exceptions applies, and Government Code § 825 requires that
28 the City pay any ensuing judgment entered in favor of a third party plaintiff. *See L.A. Police Protective*

1 *League v. City of L.A.*, 27 Cal. App. 4th 168, 174-76 (Cal. App. 1994). The second more unusual
2 circumstance is where the City refuses to assume the defense (presumably because the City believes an
3 Exception applies), a judgment is subsequently entered against the employee, and it is judicially
4 determined that none of the Exceptions apply. In that second fact pattern, Government Code §§ 825.2
5 and 996.4 require that the City pay the judgment and all of the employee's defense costs, and
6 Government Code § 970.2 provides that a writ of mandate is an appropriate remedy to compel the City
7 to pay. *See Pelayo v. City of Downey*, 570 F. Supp. 2d 1183, 1195 (C.D. Cal. 2008); *Farmers Ins. Grp.*
8 *v. Cty. of Santa Clara*, 11 Cal. 4th 992, 1002 (1995); *Rivas v. City of Kerman*, 10 Cal. App. 4th 1110,
9 1116 (Cal. App. 1992); *see generally DeGrassi v. City of Glendora*, 207 F.3d 636 (9th Cir. 2000)
10 (explaining the operation of the applicable Government Code provisions on municipal employee
11 indemnification). Municipal employee indemnity provisions of the Government Code also apply to
12 claims against police officers arising under 42 U.S.C. § 1983. *Williams v. Horvath*, 16 Cal. 3d 834, 845
13 (1976).

14 19.1.3. The State of California has long recognized that indemnification of
15 police officers, in particular, is a public good.

16 The reason for the [police officer indemnification] rule is: The duties of policemen are
17 performed for the benefit of the public, and the public is directly concerned in preserving
18 and protecting these officers from the hazard of death or bodily injuries to which the
19 performance of their official duties expose them. Aside from any considerations purely
20 personal to the officer, it is for the public good that these officers, as instruments through
21 which the city performs its functions, shall be shielded from the personal hazards [of
22 litigation] which attend the discharge of their official duties. With such protection afforded,
the public can expect that its laws will be zealously enforced without any hesitation
occasioned by considerations of possible personal involvement in defending resulting
litigation.

23 *Sinclair v. Arnebergh*, 224 Cal. App. 2d 595, 599 (1964) (internal citations omitted); *see also Monell v.*
24 *Dep't of Soc. Servs.*, 436 U.S. 658, 713, 98 S.Ct. 2018, n.9 (1978) (Powell, J., concurring) (the policy of
25 municipalities to indemnify officials sued for conduct within the scope of their authority "furthers the
26 important interest of attracting and retaining competent officers, board members, and employees.").

27 19.1.4. The indemnification of municipal employees, and particularly police
28 officers, plays an important role in the efficient and effective functioning of the City and its departments

1 and agencies, including the Police Department. *See* Burguan Declaration at ¶14, Scott Declaration at ¶8,
2 McCrary Declaration at ¶7, and Supplemental McCrary Declaration at ¶18. The City’s Chief of Police,
3 Jarrod Burguan, testified that if the City was at risk of being unable to indemnify police officers in full
4 for liability against lawsuits alleging harms committed during the performance of their job duties as
5 officers, and the officers were thus exposed to personal liability and potential financial ruin, the City
6 would not be able to hire new police officers, many police officers would leave for more financially
7 stable municipalities or federal, state or county law enforcement agencies, and the crime rate in the City
8 would increase. Burguan Declaration at ¶14. Indeed, the City’s Police Department has already been hit
9 hard by the opportunities for qualified candidates to serve in other agencies with more financial stability
10 and better equipment. Impairing the City’s indemnification obligations to the officers would pose
11 severe challenges to retention of existing officers and recruitment of new and lateral officers. Burguan
12 Declaration at ¶14; McCrary Declaration at ¶7; Exhibit 1 to McCrary Declaration, ¶18.

13 19.1.5. Despite the clear state law statutory obligation to indemnify officers and
14 the practical necessity of indemnifying officers to ensure officer morale and retention, *id.*, the unrefuted
15 evidence shows that the City does not and will not have the funds necessary to both pay the judgments
16 against the City’s employees and invest in the Police Resources Plan, among other things. *See* Busch
17 Declaration at ¶¶ 14-15. To ensure the efficient and effective functioning of the City and its
18 departments, and in particular the City Police Department, the Plan provides for payment of judgments
19 against the City, and payment of judgments against the Indemnified Parties that the City is required
20 under state law to pay, in the same manner, *i.e.*, as Class 13 Claims that receive a 1% payment on the
21 allowed claim. The Plan Injunction – which allows holders of Litigation Claims against the Indemnified
22 Parties to liquidate their claims to judgment in the state and federal courts, but enjoins collection of any
23 such judgment against the Indemnified Parties’ personal assets – is the tool that allows the City to
24 implement its Plan.

25 19.1.6. Without the relief provided by the Plan Injunction, the City would not
26 have the funds to both pay creditors pursuant to the Plan and effect the necessary revitalization of
27 municipal services for its residents. The City has demonstrated that it has the funds to implement the
28 1% distribution to creditors, and no evidence has been presented by anyone that there is more money

1 available to pay a higher distribution, including to holders of Litigation Claims that may obtain
2 judgments against the Indemnified Parties.

3 19.2. The Plan Injunction is Necessary and Appropriate to Carry Out the Terms of the
4 Plan. The Court finds and concludes that it has the jurisdiction under 28 U.S.C. § 1334(b) and authority
5 under 11 U.S.C. §§ 105(a) (court may issue any order necessary or appropriate to carry out the
6 provisions of title 11) and 1123(b)(6) (plan may include any appropriate provision not inconsistent with
7 the applicable provisions of title 11) to approve the Plan Injunction, and the Plan Injunction is necessary
8 to carry out the terms of the Plan and is appropriate in the circumstances of the Bankruptcy Case.

9 19.2.1. Jurisdiction

10 19.2.1.1. This Court has jurisdiction to approve a chapter 9 plan that
11 addresses the claims against the Indemnified Parties. 28 U.S.C. § 1334(b) grants jurisdiction over all
12 civil proceedings arising under title 11, or arising in or related to cases under title 11. “Proceedings
13 related to the bankruptcy include . . . suits between third parties which have an effect on the
14 bankruptcy.” *Celotex Corp. v. Edwards*, 514 U.S. 300, 307, 115 S. Ct. 1493, 1498-99 (1995). In the
15 Ninth Circuit, bankruptcy court “related to” jurisdiction exists over enforcement of a judgment against a
16 non-debtor that could conceivably have an effect on the administration of the debtor’s bankruptcy. *In re*
17 *American Hardwoods, Inc.*, 885 F.2d 621, 623 (9th Cir. 1989) (explaining that a bankruptcy court has
18 subject matter jurisdiction to permanently enjoin a creditor from enforcing a state court judgment against
19 non-debtor guarantors because the enforcement of the state court judgment could conceivably affect the
20 administration of the debtor’s plan). The ability of holders of Litigation Claims to enforce their claims
21 against City employees (the Indemnified Parties) that have indemnification rights against the City will
22 certainly have a material effect on the City and its assets, its payment obligations under the Plan and the
23 City’s ability to devote post-confirmation assets to the revitalization of municipal services.

24 19.2.1.2. Here, the combined effect of California Government Code
25 §§ 825, 825.2, 995 and 996.4 is that the City must pay a judgment against its employees as long as none
26 of the Exceptions apply. The judgment is a debt of the City, enforceable by writ of mandate. *See*
27 Government Code § 970.2. “The general rule is that relief sought nominally against an officer [of a
28 public entity] is in fact against the sovereign if the decree would operate against the latter.” *Hawaii v.*

1 *Gordon*, 373 U.S. 57, 58, 83 S. Ct. 1052, 1053 (1963). Similarly, the “general rule is that a suit is
2 against the sovereign ‘if the judgment sought would expend itself on the public treasury or domain, or
3 interfere with the public administration,’ or if the effect of the judgment would be to ‘restrain the
4 Government from acting, or to compel it to act.’” *Dugan v. Rank*, 372 U.S. 609, 620, 83 S. Ct. 999, 1006
5 (1963) (internal citations omitted). Under *Hawaii v. Gordon* and *Dugan v. Rank*, the City’s statutory
6 Government Code § 825 obligation to pay the judgment makes the judgment a claim on the City’s
7 treasury and certainly a “related to” claim under 28 U.S.C. § 1334. Therefore, the Court has jurisdiction
8 over such claims against the Indemnified Parties, and any objections that the Court lacks jurisdiction are
9 overruled.

10 19.2.2. Authority for the Plan Injunction

11 19.2.2.1. Section 105(a) provides that the Court may issue any order
12 that is necessary or appropriate to carry out the provisions of title 11. 11 U.S.C. § 105(a). The Ninth
13 Circuit has previously declined to approve third-party injunctions in chapter 11 cases on the basis that
14 Section 524(e) limits the court’s equitable power under section 105 to order the discharge of the
15 liabilities of nondebtors. *In re American Hardwoods, Inc.*, 885 F.2d 621, 626 (9th Cir. 1989). Section
16 524(e), however, is inapplicable in chapter 9 cases, and thus the holdings of *American Hardwoods* and
17 its progeny do not control the outcome here. *See* 11 U.S.C. § 901(a) (not including Section 524(e) in
18 chapter 9); *Deocampo v. Potts*, 836 F.3d 1134, 1143 (9th Cir. 2016) (“Chapter 9, unlike Chapter 11,
19 does not incorporate Section 524(e). . . As such, the rationale relied upon by *Lowenschuss* [that, in a
20 Chapter 11 proceeding, § 524(e) precludes bankruptcy courts from discharging the liabilities of non-
21 debtors] does not apply in Chapter 9 proceedings.”); *see also In re Connector 2000 Ass’n*, 447 B.R. 752,
22 767 (Bankr. D. S.C. 2011) (chapter 9 plan approved that contained third party releases and injunctions).

23 19.2.2.2. The circumstance under which a municipal debtor may
24 include a third-party release and injunction in its plan of adjustment is an evolving field of the law and a
25 matter of first impression in the Ninth Circuit. In the two recent municipal insolvencies of large
26 California cities, Vallejo and Stockton, this relief was not sought. In the Detroit chapter 9 case, Judge
27 Rhodes held that Section 524(e) is not a bar to a third-party release or injunction in a chapter 9 case, but
28 the proponent still must show that the injunction is necessary or appropriate under section 105(a).

1 A bankruptcy court's power to order a third party release is based on its power to reorder
2 creditor-debtor relations needed to achieve a successful reorganization . . . [and] the release
3 [must be] essential to reorganization [because] the reorganization hinges on the debtor
4 being free from indirect suits against parties who would have indemnity or contribution
5 claims against the debtor."

6 *In re City of Detroit, Michigan*, 524 B.R. 147, 266 (Bankr. E.D. Mich. 2014) (citations omitted). Judge
7 Rhodes explained that to gain approval of such a release, the debtor-city must show that the release of
8 officers is "necessary to the [c]ity's efficient and effective functioning, to its revitalization, or the
9 success of the plan." *Id.* The record of the Detroit chapter 9 case was devoid of any evidence
10 substantiating the need, and the debtor's requested third party release was not approved. *Id.* at 297.

11 19.2.2.3. So too in the City of Vallejo chapter 9 case. *See Deocampo*
12 *v. Potts*, 836 F.3d 1134 (9th Cir. 2016). In *Deocampo*, after confirmation of its plan of adjustment, the
13 City of Vallejo, defending its officers in a district court action, attempted to shoehorn a third party
14 release/injunction into its confirmed plan by arguing that the plan discharged claims against the officers
15 along with claims against the city. The Ninth Circuit recognized that a third-party injunction is not
16 precluded by the existing jurisprudence in the Ninth Circuit because 524(e) does not apply in chapter 9,
17 but found on the facts that the Vallejo plan did not discharge or enjoin claims against the officers. The
18 *Deocampo* court recognized that where an injunction is permissible, it at a minimum must be express
19 and be supported by "specific factual findings." *Id.* at 1144; *see also* Federal Rule of Bankruptcy
20 Procedure 3016 ("If a plan provides for an injunction against conduct not otherwise enjoined under the
21 Code, the plan and disclosure statement shall describe in specific and conspicuous language (bold, italic,
22 or underlined text) all acts to be enjoined and identify the entities that would be subject to the
23 injunction."). The Vallejo plan did not expressly provide for such an injunction. *Id.* at 1144 - 45. There
24 was no mention of an injunction of third-party claims. *Id.* Moreover, because the plan did not provide
25 for an injunction there were no specific factual findings that such an injunction was necessary or
26 appropriate to the plan of adjustment. *Id.* Finally, as noted by the *Detroit* court, the proponent of a third
27 party injunction must show "that the additional protection of a third-party release is necessary to the
28 City's efficient and effective functioning, to its revitalization, or to the success of its plan," *Id.* at 1144

1 n.14. The Vallejo confirmation order did not include a judicial finding that the third-party discharge or
2 adjustment was an integral part of the reorganization. *Id.* at 1145.

3 19.2.2.4. Applying the considerations identified by the *Deocampo*
4 court, an injunction may be permissible if (i) the injunction is express; (ii) the injunction is an integral
5 part of the reorganization; and (iii) the injunction is supported by specific factual findings regarding the
6 necessity of the injunction to the City's efficient and effective functioning, to its revitalization, or to the
7 success of the plan. In this case, the injunction is necessary because the City cannot afford to pay the
8 judgments of the plaintiffs against the Indemnified Parties and, absent the injunction, the City would be
9 unable to provide municipal services in accordance with the annual budgets contemplated in the City's
10 Financial Model, including not being able to implement the Police Resources Plan or make the payments
11 required by the Plan.

12 19.2.3. Necessity for and Propriety of the Plan Injunction.

13 19.2.3.1. The first factor is satisfied because the Plan Injunction was
14 expressly set forth in the Plan, the Disclosure Statement and the applicable notices as required by the
15 Federal Rules of Bankruptcy Procedure applicable to third-party injunctions. FRBP 3016(c) provides
16 that “[i]f a plan provides for an injunction against conduct not otherwise enjoined under the Code, the
17 plan and disclosure statement shall describe in specific and conspicuous language (bold, italic, or
18 underlined text) all acts to be enjoined and specify the entities that would be subject to the injunction.”
19 Federal Rule of Bankruptcy Procedure 3016(c). The City satisfied this rule because the Plan Injunction,
20 set forth in section XI.C of the Plan, was printed in bold-faced type and specified the acts to be enjoined
21 and the entities that would be subject to the injunction.

22 19.2.3.2. In addition, Federal Rule of Bankruptcy Procedure
23 2002(c)(3), entitled “Notice of Hearing on Confirmation when Plan Provides for an Injunction,”
24 provides: “If a plan provides for an injunction against conduct not otherwise enjoined under the Code,
25 the notice required under Rule 2002(b)(2) shall: (A) include in conspicuous language (bold, italic or
26 underlined text) a statement that the plan proposes an injunction; (B) describe briefly the nature of the
27 injunction; and (C) identify the entities that would be subject to the injunction.” As reflected in the
28 Confirmation Hearing Notice, the City satisfied the requirements of Rule 2002(c)(3). The Confirmation

1 Hearing Notice includes in bold text a statement that the Plan includes an injunction and describes that
2 injunction. In addition the entities that are subject to the injunction are identified. Accordingly, the City
3 complied with the requirements of the Federal Rules of Bankruptcy Procedure. *Cf. Deocampo*, 836 F.3d
4 at 1144 - 1146 (Vallejo's chapter 9 plan did not contain any express third party injunction, and no notice
5 of a third party injunction was provided). By contrast with *Deocampo*, the City complied with the
6 detailed requirements of the Federal Rules of Bankruptcy Procedure, ~~and~~ gave notice to all creditors,
7 and published notice so that any potentially affected creditors would have notice and the opportunity to
8 be heard. The Plan and notices related to the Plan complied with the Federal Rules of Bankruptcy
9 Procedure with regard to plan injunctions. There is no question that the City made the Plan Injunction a
10 linchpin of the Plan and the effect of the Plan Injunction was highly publicized. Accordingly, this first
11 factor is satisfied.

12 19.2.3.3. The second and third factors – that the injunction is integral
13 to this reorganization and its success, necessary for the revitalization of the City and its efficient and
14 effective functioning, and demonstrated by the record before the Court – are also satisfied. The
15 circumstances surrounding the City's slide into insolvency are described in the prior opinions of this
16 Court in this Bankruptcy Case. *See In re City of San Bernardino, California*, 499 B.R. 776, 778-79
17 (Bankr. C.D. Cal. 2013) (the "*Eligibility Opinion*"); *In re City of San Bernardino, California*, Case No.
18 12-28006, 2014 Bankr. LEXIS 5322, *6-13 (Bankr. C.D. Cal. 2014). In summary, the Great Recession
19 and the burst of the housing bubble in 2007 negatively affected the City of San Bernardino like many
20 other cities in California and the entire country. The drop in housing prices and increase in foreclosures
21 of single family residences resulted in significantly lower property tax revenues, a prime source of
22 revenue for California cities. The City was particularly hard hit by these phenomena because, due to the
23 cheaper housing and available financing, an influx of people moved to the Inland Empire during the
24 boom, and the consequent bust led to unprecedented foreclosures – one of the highest rates in the
25 country. Along with the foreclosures came substantial unemployment, as much of the population had
26 been employed in the housing industry, from construction workers to realtors to mortgage brokers,
27 resulting in a significant drop in household income. This decline led to less consumer sales and
28

1 consequently smaller sales tax revenues, another major component of the City's revenues. *Eligibility*
2 *Opinion*, 499 B.R. at 778-79.

3 19.2.3.4. The City's unemployment rate was 16.9% as of June 2012,
4 more than double the national rate of 8.2%. The City was impacted not only on the revenue side but also
5 by escalating expenses. The influx of population created a greater demand for public services, from
6 public safety (police and fire) to more mundane matters such as street repair and infrastructure
7 maintenance. As the economy worsened and revenues decreased, the City took some stop gap measures
8 to try to stop the bleeding. It implemented a hiring freeze and down-sized departments, reducing the
9 workforce by 20%. It negotiated and imposed concessions on its unions, saving about \$10 million per
10 year. It exhausted its general fund reserves and sold excess assets to provide cash to fund ongoing
11 operations. *Id.*

12 19.2.3.5. In May 2012, the then new Director of Finance, Jason
13 Simpson, began analyzing the City's financial condition, while attempting to formulate a budget for
14 2012-13. In doing so, Simpson determined that the budget projection for 2012-13 resulted in a
15 \$45.9 million cash deficit with no general fund reserves; the cash balances for the prior two fiscal years
16 had been overstated; the beginning cash deficit for the next fiscal year was over \$18.2 million; and the
17 City did not have enough unrestricted cash or reserves to pay its current financial obligations, those
18 obligations to become due beginning in July 2012, and continuing indefinitely. *Eligibility Opinion*, 499
19 B.R. at 780; *see also San Bernardino City Professional Firefighters Local 891 v. City of San*
20 *Bernardino, California (In re City of San Bernardino, California)*, 530 B.R. 474, 477 (C.D. Cal. 2015)
21 ("The City's financial situation deteriorated quickly in the summer of 2012. The City ran out of cash to
22 pay its creditors and employees, and had a projected budget deficit of \$45.8 million. Personnel costs
23 alone were projected to exceed all of the City's General Fund revenue.").

24 19.2.3.6. During the pendency of this Bankruptcy Case, as described
25 above, the City dramatically reduced expenses and worked diligently to increase revenues. Yet, if the
26 City were to move forward without restructuring its debts through the Plan, the City would still operate
27 at a deficit of nearly \$4 million beginning in fiscal year 2018-19, and this operating deficit would
28 increase each year to a peak ~~of a~~ deficit of nearly \$20.5 million in fiscal year 2025-26. Busch

1 Declaration at ¶8. Thus the City must restructure its debts through the Plan in order to continue as a
2 viable municipality and provide basic essential services to the City’s residents. *Id.* at ¶14. By contrast,
3 with the restructuring and fiscal and service stabilization components to the Financial Model, the City
4 will be a viable municipal service provider for its residents. *Id.* The record before the Court
5 demonstrates that the City must allocate its very limited resources to the provision of municipal services
6 to its residents and the rehabilitation of the City’s vital infrastructure. Even given the 1% payment of
7 claims under the Plan, including on Litigation Claims against the City and the Indemnified Parties, the
8 City cannot afford to fully fund the City’s critical needs. Busch Declaration at ¶21, Scott Declaration at
9 ¶9.

10 19.2.3.7. Public safety is a major concern of the City. *See*
11 Declaration of Andrea M. Travis-Miller [Dkt. No. 126], at ¶15. The City’s high violent crime rates top
12 state and national averages. Burguan Declaration at ¶7. In 2015, the City, led by Police Chief Burguan,
13 prepared the Police Services Five Year Resources Plan (“Police Resources Plan”), which was approved
14 at a regularly noticed public meeting of the Mayor and Common Council on November 16, 2015.
15 Burguan Declaration at ¶5 and Exhibit 1 thereto. The Police Resources Plan as proposed and adopted by
16 the Mayor and Common Council requires additional funds of \$56.5 million over five years to
17 implement. *Id.*

18 19.2.3.8. During the bankruptcy case, crime further increased in the
19 City. As of June 2016, there have been significant increases in violent crimes over 2015, such as
20 criminal homicide (a 100% increase), forcible rape (a 15.56% increase) and aggravated assault (a
21 17.96% increase). There were 50 homicides in San Bernardino in 2016 as of September 27, which is
22 more than the total number of homicides for all of 2015. The City has a significantly higher homicide
23 rate this year per 100,000 residents than Chicago or Oakland. Burguan Declaration at ¶ 8.

24 19.2.3.9. Under the current Financial Model, only approximately 15%
25 of the funds needed are allocated for infrastructure repair and maintenance, and the City can afford just
26 40% of what is necessary to fund the critical needs identified in the Police Resources Plan. Scott
27 Declaration at ¶9. That 40% allocation is sufficient for the City to provide basic essential services to its
28 residents, but the City will not be able to afford much beyond those basic services and the City’s critical

1 needs for funding for police services will not be fully addressed for the foreseeable future. If the City is
2 required to pay more than 1% under the Plan, the City would be required to further reduce funding for
3 the Police Resources Plan and infrastructure repair and maintenance. *Id.* Mr. Scott testified, consistent
4 with Mr. McCrary's expert testimony, that decreasing funding for the Police Resources Plan would
5 result in an increase in violent crime, less services to City residents, even greater challenges to attracting
6 businesses, and the impairment of economic growth and investment in the City. *Id.* Under those
7 circumstances, and given the realities of the City's indemnification obligations, it is necessary and
8 appropriate to enjoin the holders of Litigation Claims against Indemnified Parties from recovering from
9 City employees personally for harms that occurred within the scope of employment.

10 19.2.3.10. In addition, the City's police officers and other employees
11 contributed substantial consideration to the adjustment of debts under the Plan. The City's police
12 officers and other employees agreed to the City's modified terms and conditions of employment under
13 their new collective bargaining agreements, and as part of that process agreed to a 1% distribution on
14 their claims, which claims the parties have valued at \$130 million. The police officers alone agreed to a
15 1% distribution on their claims valued by the parties at \$74 million, principally claims for reduction of
16 pension and retiree health benefits. The employees had credible arguments under state law regarding the
17 legality of the modifications of the benefits, the litigation of which would certainly have dramatically
18 disrupted the City's momentum to a substantially consensual plan. Moreover, had the police officers
19 prevailed in any such litigation, the resulting inability of the City to impair up to \$130 million of claims
20 would have stopped the City's reorganization dead in its tracks. The police officers and other City
21 employees made a substantial financial contribution to the reorganization.

22 19.2.3.11. The police officers also make a contribution to the City's
23 reorganization by putting their lives on the line to keep the City's residents safe and secure, knowing
24 that the performance of their job duties could inevitably lead to both injury and litigation at some point
25 in their careers. *See e.g.*, the declarations of former police officers Brian Cartony (Dkt. No. 1995-1) at
26 ¶ 3 ("shot in the lower back by a suspect in the course of a homicide"), Daniel Keil (Dkt. No. 1995-2) at
27 ¶ 4-5 ("multiple physical altercations with suspects," "run over by a vehicle," "head injuries from being
28 knocked into walls and floors," and "neck injuries, back injuries and blowing out both knees" in

1 incidents with suspects), and John Montecino (Dkt. No. 1995-4) at ¶ 4 (“shot at on multiple, separate
2 occasions in the line of duty”). The City’s police officers as a group are making a substantial
3 contribution to the Plan and the City’s revitalization by virtue of their continued service to the City.

4 19.2.3.12. Another factor in favor of approving the Plan Injunction is
5 that the Plan Injunction is narrowly tailored. First, at the request of certain holders of Litigation Claims,
6 the City revised the Plan Injunction to clarify that claims against Indemnified Parties can be litigated and
7 can proceed to judgment. Only collection of those judgments will be enjoined, and only to the extent of
8 the City’s indemnification obligation. The plaintiffs will still be able to recover from any available
9 insurance. If not satisfied with applicable insurance, claims against employees that are indemnified by
10 the City (the Indemnified Parties) will be satisfied as General Unsecured Class 13 Claims under the
11 Plan. The Plan Injunction is narrowly tailored to achieve the specific purposes of the Plan, namely that
12 the City can operate after the Confirmation Date in accordance with the Financial Model and provide
13 basic municipal service to its residents.

14 19.2.3.13. A final factor that the Court weighed in favor of approving
15 the Plan Injunction was the settlement achieved by the City and BICEP (see Dkt. No. 2096), which
16 settlement kept in place the excess liability coverage provided for in the BICEP Agreements even
17 though the City will pay the self-insured retention (“SIR”) in accordance with the treatment of Class 13
18 claims under the Plan. Thus, for the Litigation Claims allowed in an amount in excess of the \$1 million
19 SIR under the BICEP Agreements, the City will utilize the coverage available under the BICEP
20 Agreements to pay the portion of the claim in excess of \$1 million.

21 20. Burden of Proof. The City has met its burden of proving by a preponderance of the
22 evidence on the elements of Section 943(b) and the other Sections of the Bankruptcy Code made
23 applicable to confirmation of the Plan by Sections 103)(f) and 901, including Sections 1122 through
24 1142, and 1145.

25 **ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, AS FOLLOWS:**

26 21. Confirmation of Plan.

27 21.1. The Plan and each of its provisions (whether or not specifically approved herein)
28 are CONFIRMED in each and every respect, pursuant to section 943 of the Bankruptcy Code. Failure

1 specifically to include or reference particular sections or provisions of the Plan or any related agreement
2 in this Confirmation Order shall not diminish or impair the effectiveness of such sections or provisions,
3 it being the intent of the Court that the Plan be confirmed and such related agreements be approved in
4 their entirety. The Effective Date of the Plan shall occur on the date determined by the City when the
5 conditions set forth in Section XIII.B of the Plan have been satisfied or, if applicable, have been waived
6 in accordance with Section XIII.C of the Plan.

7 21.2. Any objections or responses to, or reservations of right regarding confirmation of
8 the Plan that (a) have not been withdrawn, waived or settled prior to the entry of this Confirmation
9 Order or (b) are not cured by the relief granted herein are hereby OVERRULED in their entirety and on
10 the merits, and all withdrawn objections or responses are hereby deemed withdrawn with prejudice. All
11 creditors that failed to file objections to confirmation of the Plan are hereby deemed to have waived any
12 objections to the terms of the Plan, confirmation of the Plan, and the terms of this Confirmation Order.

13 22. Confirmation Order Binding on All Parties. In accordance with Section 944(a) and
14 notwithstanding any otherwise applicable law, upon the occurrence of the Effective Date, the terms of
15 the Plan and this Confirmation Order shall be binding upon: (a) the City; (b) any and all holders of
16 Claims, including holders of Litigation Claims against the City or the Indemnified Parties, irrespective
17 of whether (i) any such Claim is impaired under the Plan, (ii) proof of any such Claim has been filed or
18 deemed filed under section 501 of the Bankruptcy Code, (iii) any such Claim is allowed under section
19 502 of the Bankruptcy Code or (iv) the holders of such Claims accepted, rejected or are deemed to have
20 accepted or rejected the Plan; (c) any and all non-debtor parties to executory contracts or unexpired
21 leases with the City; (d) any party to any settlement with the City; and (g) the respective heirs,
22 executors, administrators, trustees, affiliates, officers, directors, agents, representatives, attorneys,
23 beneficiaries, guardians, successors or assigns of any of the foregoing.

24 23. Discharge of Claims. Except as specifically provided otherwise in the Plan, this
25 Confirmation Order or any document or instrument evidencing or implementing any settlement
26 approved hereby, as of the Effective Date, pursuant to Sections 524(a)(1), 524(a)(2) and 944(b), all
27 debts of the City shall be, and hereby are, discharged, and such discharge will void any judgment
28 obtained against the City at any time, to the extent that such judgment relates to a discharged debt;

1 *provided that* such discharge shall not apply to debts held by an entity that, before the Confirmation
2 Date, had neither notice nor actual knowledge of the Bankruptcy Case.

3 24. Approval And Effectiveness of Plan Article XI Provisions; Including The Plan Injunction

4 24.1. The Provisions of Article XI. of the Plan, including the Plan Injunction, are
5 approved in all respects, are incorporated herein in their entirety, are so ordered and shall be
6 immediately effective on the Effective Date of the Plan without further order or action on the part of the
7 Court, the City, the Indemnified Parties or any holder of a Litigation Claim.

8 24.2. Pursuant to the Plan Injunction, all entities holding, claims, judgments or rights to
9 remedies against past or present employees or officers of the City entitled to Indemnification¹⁸ from the
10 City (the Indemnified Parties¹⁹) based upon acts or omissions that occurred or arose prior to the
11 Confirmation Date are hereby enjoined from enforcing such claims, judgments or remedies in any
12 manner against the person or assets of the Indemnified Parties, except that the Plan Injunction shall not
13 prevent the holders of judgments or remedies from seeking recourse against available insurance
14 coverage. The Plan Injunction applies to all pre-Confirmation Date claims against the Indemnified
15 Parties, whether or not a lawsuit based upon such claim has been filed or will be filed, and whether a
16 lawsuit is filed prior to or after the Confirmation Date. Therefore, holders of Litigation Claims²⁰ against
17 Indemnified Parties: (a) shall be entitled to payment of any such allowed claims pursuant to the terms of
18

19 ¹⁸ “Indemnification,” as defined in the Plan, means rights of indemnity, defense, reimbursement, and
20 advancement of fees and expenses of current and former officers and employees of the City with respect
21 to any claims or lawsuits brought against such officers and employees by third parties, in each case
22 arising out of an act or omission occurring within the scope of such officer’s or employee’s employment
23 as an employee of the City.

24 ¹⁹ “Indemnified Parties,” as defined in the Plan, means the current and former officers and employees of
25 the City who are entitled to Indemnification.

26 ²⁰ Litigation Claims, as defined in the Plan, means (a) those lawsuits against the City that are still
27 pending as of the Confirmation Date, including those listed in Exhibit 6 to the Appendix [of Exhibits to
28 Plan]; (b) those lawsuits against the City that are filed on or after the Confirmation Date based on acts,
claims or omissions that occurred or arose prior to the Confirmation Date; and (c) those lawsuits against
any of the Indemnified Parties, whether filed prior to the Confirmation Date or on or after the
Confirmation Date based on acts, claims or omissions that occurred or arose prior to the Confirmation
Date, as to which lawsuits the City has assumed or will assume the defense thereof and became or
becomes obligated to pay any judgment arising therefrom pursuant to Cal. Government Code §§ 825,
970, 995 and 996 and any other applicable law or rule.

1 the Plan as Class 13 Claims that are receiving a 1% distribution on the amount of the allowed claim;
2 (b) may also recover from available insurance; but (c) may not enforce any claims, judgments or
3 remedies arising from their Litigation Claims against the person or assets of the Indemnified Parties.

4 24.3. Attached to this Confirmation Order as Exhibit B are non-exclusive lists prepared
5 by the City of: (a) pending lawsuits in which pre-Confirmation Date claims against Indemnified Parties
6 are asserted; and (b) claimants who have given the City notice of pre-Confirmation Date claims against
7 Indemnified Parties but have not yet filed lawsuits. All persons and entities asserting the pre-
8 Confirmation Date claims referenced in Exhibit B are subject to the Plan Injunction with respect to such
9 pre-Confirmation Date claims against Indemnified Parties. All other persons and entities not identified
10 on Exhibit B but who have or will assert pre-Confirmation Date claims against Indemnified Parties are
11 also subject to the Plan Injunction with respect to such pre-Confirmation Date claims. The inclusion of a
12 person or entity on Exhibit B is not and shall not be deemed an admission by the City that such party has
13 a claim against the City or an Indemnified Party, nor shall the omission of a person or entity from
14 Exhibit B constitute a waiver of the applicability of the Plan Injunction or otherwise prejudice the City
15 in any way.

16 24.4. Approval of ADR Procedures; Continuation of Stay for Purposes of ADR and
17 Claims Allowance Procedures.

18 24.4.1. The ADR Procedures are approved, incorporated into this Confirmation
19 Order by this reference and made a part hereof, and shall be enforceable in this Court and any other
20 court of applicable jurisdiction. All holders of claims against the City or the Indemnified Parties are
21 directed to participate in the ADR Procedures prior to pursuing allowance of their claims in this Court or
22 liquidation of their claims in any other court. The City shall have until the later of (x) 180 days after the
23 Effective Date or (y) 180 days after the City receives written notice of a pre-Confirmation Date claim
24 against the City or an Indemnified Party to give notice to the claimant that the City intends to try and
25 resolve the claim pursuant to the ADR Procedures. The Court shall retain jurisdiction to resolve disputes
26 arising in implementation of the ADR Procedures, and to fill in any gaps in the ADR Procedures as
27 circumstances require.

1 24.4.2. All injunctions or stays provided for in the Bankruptcy Case pursuant to
2 Bankruptcy Code Sections 105, 362, or 922, or otherwise, and in existence immediately prior to the
3 Confirmation Date, shall remain in full force and effect until the Effective Date, and shall continue in
4 full force and effect after the Effective Date, together with the injunction provisions of Article XI of the
5 Plan, for the purpose of resolving claims, including Litigation Claims, through the ADR Procedures,
6 judicial determination of the City's liability (or lack thereof) on any pre-Confirmation Date claim and
7 the allowance or disallowance thereof.

8 24.4.3. If a claim cannot be resolved through the ADR Procedures, then any
9 right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal
10 injury or wrongful death tort claim is preserved. *See* 28 U.S.C. §§ 157(b)(5) and 1411; *see also Sigma*
11 *Micro Corp. v. Healthcentral.com (In re Healthcentral.com)*, 504 F.3d 775, 787 (9th Cir. 2007) (“A
12 Seventh Amendment jury trial right does not mean the bankruptcy court must instantly give up
13 jurisdiction and that the case must be transferred to the district court. Instead, the bankruptcy court is
14 permitted to retain jurisdiction over the action for pre-trial matters. Allowing the bankruptcy court to
15 retain jurisdiction over pre-trial matters does not abridge a party's Seventh Amendment right to a jury
16 trial.”).

17 25. Survival of Indemnification Obligations. In accordance with the operation of the Plan
18 Injunction, nothing in this Confirmation Order or the Plan discharges the obligations of the City,
19 pursuant to its past practices and applicable law, to indemnify its officers and employees for any pre-
20 Confirmation Date acts or omissions in the scope of their employment by the City.

21 26. Executory Contracts and Unexpired Leases. Assumption of the contracts and leases
22 listed in the List of Assumed Executory Contracts and Unexpired Leases filed with the Court, as
23 modified from time to time, is hereby approved. Assumption and assignment of the contracts and leases
24 listed in the List of Assumed and Assigned Executory Contracts and Unexpired Leases filed with the
25 Court, as modified from time to time, is hereby approved. Rejection of the contracts and leases listed in
26 the List of Rejected Executory Contracts and Unexpired Leases filed with the Court, as modified from
27 time to time, is hereby approved, and all other executory contracts and unexpired leases that are not
28 assumed or assumed and assigned are hereby rejected. Any time within 180 days after the Effective

1 Date, the City may file a motion to add or remove contracts or leases to or from the List of Assumed
2 Executory Contracts and Unexpired Leases, List of Assumed and Assigned Executory Contracts and
3 Unexpired Leases and List of Rejected Executory Contracts and Unexpired Leases, or otherwise modify
4 any decision to assume, assign or reject any executory contract or unexpired lease, upon notice to the
5 counterparty.

6 27. Plan Implementation. In accordance with Section 1142, without the necessity of further
7 action by the Court, the City is authorized to take any and all actions necessary or appropriate to
8 implement, effectuate and consummate the Plan, this Confirmation Order and the transactions
9 contemplated thereby or hereby.

10 28. Binding Effect of Prior Orders. Effective as of the Confirmation Date, but subject to the
11 occurrence of the Effective Date and subject to the terms of the Plan and this Confirmation Order, all
12 prior orders entered in the Bankruptcy Case and all documents and agreements executed by the City as
13 authorized and directed thereunder shall be binding upon and shall inure to the benefit of the City and
14 any other parties expressly subject thereto.

15 29. Final Order; Waiver of Stay. This Confirmation Order is a final order, and the period in
16 which an appeal must be filed shall commence immediately upon the entry hereof. The stay of this
17 Confirmation Order otherwise imposed by Bankruptcy Rule 3020(e) is hereby waived as of the date
18 hereof.

19 30. Reversal. If any or all of the provisions of this Confirmation Order are hereafter
20 reversed, modified, ~~or~~ vacated or stayed by subsequent order of this Court or any other federal appellate
21 court with appropriate jurisdiction, such reversal, modification, ~~or~~ vacatur or stay shall not affect the
22 validity of the acts or obligations incurred or undertaken under or in connection with the Plan prior to
23 the City's receipt of written notice of such order. Notwithstanding any such reversal, modification, ~~or~~
24 vacatur, or stay of this Confirmation Order, any such act or obligation incurred or undertaken pursuant
25 to, and in reliance on, this Confirmation Order prior to the effective date of such reversal, modification,
26 ~~or~~ vacatur or stay shall be governed in all respects by the provisions of this Confirmation Order and the
27 Plan and all related documents or any amendments or modifications thereto.

1 31. Miscellaneous Provisions.

2 31.1. Additional Non-Material Modifications. The City is hereby authorized to make
3 non-material modifications or amendments to the Plan at any time prior to the substantial consummation
4 of the Plan, without further order of the Court.

5 31.2. Kohl's. Nothing in the Plan or this Confirmation Order shall effect a discharge or
6 waiver of the Claims of Kohl's Department Stores, Inc. ("Kohl's") for refunds on account of taxes paid
7 to the City after the Petition Date (the "Tax Refund Claims"), which are subject to a tolling agreement
8 between the City and Kohl's dated August 7, 2014, the Amended Tolling Agreement dated August 7,
9 2015, and the Second Amended Tolling Agreement dated as of July 30, 2016 (collectively, the "Tolling
10 Agreement"). The Tolling Agreement shall remain in effect, and all of Kohl's and the City's rights,
11 claims and defense in connection with the Tax Refund Claims are hereby preserved.

12 31.3. Class 14 Elections Made in Error to Detriment of Claimants. Notwithstanding
13 anything to the contrary in the Plan or any applicable Ballot, any Retiree holding an Allowed Retiree
14 Health Benefit Claim of more than \$10,000.00, who elected on their Ballot to have their Retiree Health
15 Benefit Claim treated as a Convenience Class Claim (Class 14), shall be deemed not to have made such
16 election. Each Retiree Health Benefit Claim of more than \$10,000.00 shall be treated as a Class 13
17 General Unsecured Claim.

18 31.4. Certain Settlements.

19 31.4.1. The "Stipulation Between City of San Bernardino and BICEP Resolving
20 BICEP's Motion to Compel Assumption or Rejection of the BICEP Agreements and BICEP's Objection
21 to Confirmation of City's Third Amended Plan," filed on December 2, 2016 (Dkt. No. 2096, the
22 "BICEP Stipulation"), is hereby approved, incorporated herein as part of this Order and made a part of
23 the Plan, and the Court shall retain jurisdiction to resolve all disputes between the City and BICEP in
24 any way related to pre-Confirmation Date claims against the City or the Indemnified Parties (including
25 utilizing the "mediation first" provisions of the BICEP Stipulation). The City's assumption of the
26 BICEP Agreements is also approved.

27 31.4.2. Notwithstanding anything to the contrary in the Plan or this
28 Confirmation Order, the City's obligations under the SBCPF Settlement Agreement may not be

1 discharged pursuant to the claims discharge provisions of the Plan or Bankruptcy Code, and the
2 SBCPF's right to enforce the SBCPF Settlement Agreement in this Court shall not be enjoined. For the
3 avoidance of doubt, as set forth in the Plan, the SBCPF Settlement Agreement shall not be rejected.

4 31.4.3. The POB Settlement Agreement (i) was duly authorized, executed and
5 delivered by the City, (ii) the obligations of the City under such agreement are valid and binding
6 obligations of the City, enforceable in accordance with its terms, and (iii) is hereby approved. The City
7 is authorized to enter into, execute, deliver and file with the Court any further documents the City
8 reasonably deems necessary to implement the Settlement Agreement (the "Additional Documents"),
9 including but not limited to the Additional Documents filed with the Court at Docket No. 2150 (as such
10 may be modified or amended from time to time). Upon the occurrence of the Effective Date and
11 execution and delivery by the parties of the Additional Documents, (a) such Additional Documents shall
12 be deemed duly authorized, executed and delivered by the parties, and (b) the obligations of the parties
13 under such Additional Documents shall be valid and binding obligations of the parties and enforceable
14 in accordance with their respective terms.

15 31.4.4. The Plan and this Confirmation Order shall not impair or modify in any
16 way SANBAG's rights under the SANBAG Agreement (including without limitation SANBAG's power
17 to withhold Measure I funds).

18 31.4.5. The City's settlements with the Consenting Unions, including the
19 attendant memorandums of understanding and each Agreement Regarding Class 13 General Unsecured
20 Claim between the City and the respective Consenting Union are hereby approved (including the
21 stipulated amounts of Class 13 General Unsecured Claims) and shall govern the distributions to current
22 and former employees of the City represented by such Consenting Unions.

23 31.5. 1996 Refunding Bonds and 1999 Refunding Certificates of Participation.

24 31.5.1. The holders of the 1996 Refunding Bonds and 1999 Refunding
25 Certificates of Participation (the "Insured Bonds") have received appropriate notice of: (i) the
26 solicitation of the Plan, (ii) the confirmation hearing, (iii) National's position as the deemed holder of
27 the claims of the Insured Bonds, and the fact that National was entitled to vote to accept or reject the
28 Plan as such, (iv) the fact that the holders of the Insured Bonds were not entitled to vote to accept or

1 reject the Plan, (v) the deadline for voting on the Plan, (vi) the deadline for objecting to confirmation of
2 the Plan, and (vii) the exculpation provisions set forth in Section XI.E. of the Plan. No holder of an
3 Insured Bond filed an objection to the Plan, either on a formal or informal basis, nor submitted a vote in
4 relation to the Plan. Each holder of an Insured Bond is therefore bound by the terms and provisions of
5 the Plan, including but not limited to Section XI.E. of the Plan.

6 31.5.2. The Plan and each of the Plan Documents and ancillary agreements and
7 undertakings necessary to effectuate the Plan (including, without limitation, the 1999 Refunding
8 Certificates of Participation Amendment and the 1996 Refunding Bonds Amendment) were developed
9 and negotiated in good faith and at arms'-length among representatives of the City, National, the 1999
10 Refunding Certificates of Participation Trustee and the 1996 Refunding Bonds Trustee. The Plan's
11 classification, indemnification, exculpation, release, and injunction provisions are consistent with
12 sections 105, 1122, 1123(b)(6), 1123(b)(3)(A), 1129, and 1142 of the Bankruptcy Code, and are each
13 necessary for the Debtor's successful reorganization.

14 31.5.3. Entry into and consummation of the transactions contemplated by 1999
15 Refunding Certificates of Participation Amendment and the 1996 Refunding Bonds Amendment is in
16 the best interests of the City and holders of the Insured Bonds and are approved in all respects. Each of
17 the City, National, the 1999 Refunding Certificates of Participation Trustee and the 1996 Refunding
18 Bonds Trustee has exercised reasonable business judgment in connection with the negotiation and
19 consummation of the 1999 Refunding Certificates of Participation Amendment and the 1996 Refunding
20 Bonds Amendment, respectively, and the transactions contemplated thereby. The City, the 1999
21 Refunding Certificates of Participation Trustee and the 1996 Refunding Bonds Trustee are authorized,
22 without further notice to or action, order, or approval of this Court or any other Person, to enter into and
23 fully perform their obligations under the Plan and each of the Plan Documents and ancillary agreements
24 and undertakings necessary to effectuate the Plan (including, without limitation, the 1999 Refunding
25 Certificates of Participation Amendment and the 1996 Refunding Bonds Amendment).

26 31.5.4. The City, National, the 1999 Refunding Certificates of Participation
27 Trustee, the 1996 Refunding Bonds Trustee, and each of their respective agents, successors,
28 predecessors, control persons, members, officers, directors, employees and agents and their respective

1 attorneys, financial advisors, investment bankers, accountants, and other professionals retained by such
2 persons, to the extent applicable, (i) have acted in “good faith” within the meaning of section 1125(e) of
3 the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code, the
4 Bankruptcy Rules, the Local Rules and any applicable non-bankruptcy law, rule, or regulation governing
5 the adequacy of disclosure in connection with all their respective activities relating to the solicitation of
6 acceptances to the Plan and their participation in the activities described in section 1125 of the
7 Bankruptcy Code and (ii) shall be deemed to have participated in good faith and in compliance with the
8 applicable provisions of the Bankruptcy Code in the offer and issuance of any securities under the Plan,
9 and therefore are not, and on account of such offer, issuance and solicitation will not be, liable at any
10 time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances
11 or rejections of the Plan or the offer and issuance of the securities under the Plan, and are entitled to the
12 protections afforded by section 1125(e) of the Bankruptcy Code and the release, exculpation and related
13 Plan provisions, as set forth and to the extent provided pursuant to Article XI of the Plan.

14 31.6. Agreements with the United States. Notwithstanding any other provision of the
15 Plan or this Confirmation Order to the contrary:

16 31.6.1. The City’s obligations pursuant to its Contracts for Loan Guarantee
17 Assistance Under Section 108 of the Housing and Community Development Act of 1974, as amended,
18 42 U.S.C. § 5308, with the United States Department of Housing and Urban Development shall remain
19 extant and enforceable and not subject to discharge pursuant to 11 U.S.C. § 944; provided, however, that
20 the City retains all defenses to the enforceability of such obligations under applicable non-bankruptcy
21 law.

22 31.6.2. Nothing in the Plan or Confirmation Order shall adversely affect in any
23 way the rights and remedies of the United States and the State of California under the consolidated
24 actions styled as *City of San Bernardino v. United States and State of California, on behalf of*
25 *Department of Toxic Substances Control v. United States*, Civil Action Nos. 96-8867 (MRP), 96-5205
26 (MRP) - Consolidated (C.D. Cal.), including without limitation, the Consent Decree therein and any
27 amendment thereto (“C.D. Cal. Actions”), nor shall anything in the Plan or the Confirmation Order
28 divest or limit the jurisdiction of the United States District Court for the Central District of California

1 over the C.D. Cal. Actions. Upon the Effective Date of the Plan, the C.D. Cal. Actions shall survive the
2 bankruptcy case and may be adjudicated and enforced in the United States District Court for the Central
3 District of California, provided, however, that Bankruptcy Court approval must be obtained for any
4 allowance of an administrative expense.

5 31.6.3. As to the United States, its agencies, departments or agents, nothing in
6 the Plan or Confirmation Order shall discharge, release, or otherwise preclude: (1) any liability of the
7 City to the United States, its agencies, departments or agents arising on or after the Effective Date; (2)
8 any liability to the United States, its agencies, departments or agents that is not a “claim” within the
9 meaning of section 101(5) of the Bankruptcy Code; (3) any valid defense of setoff or recoupment with
10 respect to a Claim of the United States, its agencies, departments or agents; (4) the continued validity of
11 the City’s obligations to the United States, its agencies, departments or agents under any grant or
12 cooperative assistance agreement; (5) any liability of any entity under environmental law arising or
13 springing anew after the Effective Date that any entity would be subject to as a post-Effective Date
14 owner or operator of property; or (6) the United States from, subsequent to the Confirmation Date,
15 pursuing any police or regulatory action against the City.

16 32. Notice of Effective Date. On or before 14 days after occurrence of the Effective Date,
17 the City or its agent shall mail or cause to be mailed to all holders of Claims the Notice of the Effective
18 Date, which will inform such holders of: (i) entry of the Confirmation Order; (ii) the occurrence of the
19 Effective Date; (iii) the assumption and rejection of the City’s executory contracts and unexpired leases
20 pursuant to this Plan, as well as the deadline for the filing of Claims arising from such rejection; (iv) the
21 procedures for changing an address of record pursuant to Section IX of the Plan; and (v) such other
22 matters as the City deems to be appropriate.

23 33. Findings Of Fact And Conclusions Of Law. Regardless of where set forth in this
24 Confirmation Order, any finding of fact constitutes a finding of fact even if it is stated as a conclusion of
25 law or otherwise, and any conclusion of law constitutes a conclusion of law even if it is stated as a
26 finding of fact or otherwise. All findings of fact and conclusions of law announced by the Court on the
27 record in connection with confirmation of the Plan or otherwise at the Confirmation Hearing are
28

1 incorporated herein by reference. The findings of fact and conclusions of law set forth herein and in the
2 record of the Confirmation Hearing constitute the Court's findings of fact and conclusions of law
3 pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy
4 Rules 7052 and 9014.

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26 Date: February 7, 2017


Meredith A. Jury
United States Bankruptcy Judge

Exhibit A

1 PAUL R. GLASSMAN (State Bar No. 76536)
FRED NEUFELD (State Bar No. 150759)
2 MARIANNE S. MORTIMER (State Bar No. 296193)
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E-mail: saenz_ga@sbcity.org
12 Attorneys for Debtor
13 City of San Bernardino

14
15 **UNITED STATES BANKRUPTCY COURT**
CENTRAL DISTRICT OF CALIFORNIA
16 **RIVERSIDE DIVISION**

17
18 In re
19 CITY OF SAN BERNARDINO,
CALIFORNIA,

20 Debtor.

Case No. 6:12-bk-28006-MJ

Chapter 9

**THIRD AMENDED PLAN FOR THE
ADJUSTMENT OF DEBTS OF THE
CITY OF SAN BERNARDINO,
CALIFORNIA (JULY 29, 2016), AS
MODIFIED**

Plan Confirmation Hearing

Date: October 14, 2016
Time: 10:00 a.m.
Place: Courtroom 301
3420 Twelfth Street
Riverside, CA 92501-3819

TABLE OF CONTENTS

		Page
1	I. RULES OF INTERPRETATION; DEFINITIONS; COMPUTATION OF TIME.....	1
2	A. Rules of Interpretation.....	1
3	B. Definitions.....	1
4	C. Computation of Time.....	17
5	II. TREATMENT OF ADMINISTRATIVE CLAIMS AND PROFESSIONAL CLAIMS.....	17
6	A. Treatment of Administrative Claims.....	17
7	B. Deadline for the Filing and Assertion of Administrative Claims.....	17
8	C. Treatment of Professional Claims.....	18
9	D. Priority Claims in Chapter 9.....	18
10	III. DESIGNATION OF CLASSES OF CLAIMS.....	18
11	IV. TREATMENT OF CLAIMS.....	19
12	A. Class 1 – 1996 Refunding Bonds Claims.....	19
13	B. Class 2 – 1999 Refunding Certificates of Participation Claims.....	20
14	C. Class 3 – Secured Claims: CIEDB Harriman Project Claims.....	21
15	D. Class 4 – Secured Claims: CIEDB Pavement Project Claims.....	21
16	E. Class 5 – Secured Claims: Police Station AC Financing Claims.....	22
17	F. Class 6 – Secured Claims: Burgess Claims.....	22
18	G. Class 7 – Claims on Restricted Revenue Bond and Note Payable Obligations.....	23
19	H. Class 8 – CalPERS Claims.....	23
20	I. Class 9 – PARS Claims.....	24
21	J. Class 10 – Consenting Union Claims.....	24
22	K. Class 11 – Retiree Health Benefit Claims.....	26
23	L. Class 12 – POB Claims.....	26
24	M. Class 13 – General Unsecured Claims.....	26
25	N. Class 14 – Convenience Class Claims.....	27
26	V. ACCEPTANCE OR REJECTION; CRAMDOWN.....	27
27	A. Voting of Claims.....	27
28	VI. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES.....	28
29	A. Assumption of Executory Contracts and Unexpired Leases.....	28
30	B. Cure Payments.....	28
31	C. Rejection of Executory Contracts and Unexpired Leases.....	29
32	D. Claims Arising From Rejection.....	29
33	E. Modifications to Assumption, Assignment or r ejection of Executory Contracts and Unexpired Leases.....	30
34	VII. EXECUTION AND IMPLEMENTATION OF THE PLAN.....	30
35	A. In General.....	30
36	B. Means for Implementation of the Plan.....	30
37	C. Insurance.....	50
38	D. Continued Operations.....	52
39	VIII. RETENTION OF THE CITY’S RIGHTS OF ACTION.....	52
40	IX. DISTRIBUTIONS.....	53
41	A. Distribution Agent.....	53
42	B. Delivery of Distributions.....	53
43	C. Distributions of Cash.....	53
44	D. Timeliness of Payments.....	53
45	E. Compliance with Tax, Withholding, and Reporting Requirements.....	54
46	F. Time Bar to Cash Payments.....	54

TABLE OF CONTENTS

		Page
1	G. No De Minimis Distributions.....	54
	H. Distributions of Unclaimed Property.....	54
2	I. No Distributions on Account of Disputed Claims.....	55
	J. Certain Claims to be Expunged.....	55
3	K. No Post-petition Accrual.....	55
4	X. DISPUTED CLAIMS; OBJECTIONS TO CLAIMS; PROSECUTION OF	
	OBJECTIONS TO DISPUTED CLAIMS.....	56
5	A. Claims Objection; ADR Procedures; Prosecution of Objections.....	56
	B. Payments and Distributions with Respect to Disputed Claims.....	56
6		
7	XI. EFFECT OF CONFIRMATION.....	56
	A. Discharge of the City.....	56
8	B. Release by Holders of Pre-Confirmation Date Claims.....	57
	C. Injunction.....	58
9	D. Term of Existing Injunctions or Stays.....	59
	E. Exculpation.....	59
10	F. Comprehensive Settlement of Claims and Controversies.....	60
	G. Limitation on Scope of Release and Injunction Provisions of	
	Sections XI.B. and XI.C. With Respect to the Indemnified Parties.....	60
11	H. Agreements with the United States.....	61
12	XII. RETENTION OF AND CONSENT TO JURISDICTION.....	62
13	XIII. CONDITIONS PRECEDENT.....	64
	A. Conditions Precedent to Confirmation.....	64
14	B. Conditions Precedent to Effective Date.....	64
	C. Waiver of Conditions to Effective Date.....	64
15	D. Effect of Failure of Conditions.....	65
	E. No Admission of Liability.....	65
16		
17	XIV. MISCELLANEOUS PROVISIONS.....	65
	A. Modification of Plan.....	65
18	B. Dissolution of the Retiree Committee.....	65
	C. Severability.....	66
19	D. Governing Law.....	66
	E. Effectuating Documents and Further Transactions.....	66
20	F. Request for Waiver of Automatic Stay of Confirmation Order.....	67
	G. Notice of Effective Date.....	67
21		
22		
23		
24		
25		
26		
27		
28		

1 The City of San Bernardino, California, a debtor under Chapter 9 of the Bankruptcy Code in
2 the case *In re City of San Bernardino, California*, Case No. 6:12-28006, currently pending in the
3 United States Bankruptcy Court for the Central District of California, hereby proposes the following
4 *Third Amended Plan for the Adjustment of Debts of the City of San Bernardino, California (July 29,*
5 *2016), as Modified* pursuant to Bankruptcy Code section 941.

6 Please refer to the Disclosure Statement included with this Plan for a discussion of the City's
7 financial condition, the developments throughout the Bankruptcy Case, and other important
8 information. The City encourages you to read this Plan and the Disclosure Statement in their
9 entirety before voting to accept or reject this Plan.

10 **I. RULES OF INTERPRETATION; DEFINITIONS; COMPUTATION OF TIME**

11 **A. Rules of Interpretation.**

12 For purposes herein: (i) the words "herein," "hereof," "hereto," "hereunder," and others of
13 similar import refer to this Plan as a whole and not to an particular section, subsection, or clause
14 contained in this Plan; (ii) unless otherwise specified, all references in this Plan to "Sections" and
15 "Exhibits" (uppercased) are to the respective Section in the Plan or Exhibit to the Appendix, as the
16 same may be amended or modified from time to time; (iii) the headings in this Plan are for
17 convenience of reference only and do not limit or otherwise affect the provisions of this Plan; (iv) in
18 the appropriate context, words denoting the singular number include the plural number and vice
19 versa; (v) the rules of construction set forth in Bankruptcy Code section 102 apply; (vi) any term
20 used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code
21 or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the
22 Bankruptcy Rules, as the case may be; and (vii) any reference to an Entity as a holder of a Claim
23 includes such Entity's successors and assigns.

24 **B. Definitions.**

25 **1. 1996 Refunding Bonds** means the \$16,320,000 San Bernardino Joint Powers
26 Financing Authority Lease Revenue Refunding Bonds (City Hall Project) Series 1996 issued
27 pursuant to the 1996 Trust Indenture.
28

1 **2. 1996 Refunding Bonds Agreements (City Hall)** means the following
2 executory contracts and unexpired leases to which the City is a party: (i) the Continuing Disclosure
3 Agreement dated December 18, 1996, by and between the City and the 1996 Refunding Bonds
4 Trustee; (ii) the Ground Lease dated as of December 1, 1996, by and between the City and the RDA;
5 and (iii) the City Hall Lease.

6 **3. 1996 Refunding Bonds Amendment** means the Amendment to the 1996
7 Trust Indenture and the City Hall Lease, which will be included as an Exhibit to the Appendix.

8 **4. 1996 Refunding Bonds Trustee** means U.S. Bank National Association, not
9 individually but as successor indenture trustee under the 1996 Trust Indenture with respect to the
10 1996 Refunding Bonds.

11 **5. 1996 Trust Indenture** means the Trust Indenture, dated as of December 1,
12 1996, between the JPFA and First Trust of California, National Association, as trustee, entered into
13 in connection with the issuance the 1996 Refunding Bonds.

14 **6. 1998 Refunding Certificates of Participation** means the \$36,230,000 City of
15 San Bernardino Municipal Water Department 1998 Refunding Sewer Revenue Certificates of
16 Participation.

17 **7. 1998 Refunding Certificates of Participation Agreements (Sewer)** means
18 the following contracts and agreements to which the City is a party: (i) the Trust Agreement, dated
19 July 1, 1998, by and among the San Bernardino Public Safety Authority, the City and the 1998
20 Refunding Certificates of Participation Trustee; (ii) the Installment Purchase Agreement, dated July
21 1, 1998, by and between the City and the San Bernardino Public Safety Authority; and (iii) all other
22 documents or agreements executed in connection with the foregoing and the 1998 Refunding
23 Certificates of Participation as to which the City is a party, beneficiary or obligor.

24 **8. 1998 Refunding Certificates of Participation Trustee** means U.S. Bank
25 National Association, not individually but as indenture trustee under the 1998 Trust Indenture with
26 respect to the 1998 Refunding Certificates of Participation.

1 **9. 1999 Refunding Certificates of Participation** means the \$15,480,000
2 Refunding Certificates of Participation (Police Station, South Valle and 201 North E Street Projects)
3 issued pursuant to the 1999 Trust Agreement.

4 **10. 1999 Refunding Certificates of Participation Agreements (Police**
5 **Station/201 North E Street/South Valle)** means the following executory contracts and unexpired
6 leases to which the City is a party: (i) the Continuing Disclosure Agreement dated September 29,
7 1999 by and between the City and the 1999 Refunding Certificates of Participation Trustee; (ii) the
8 201 North E Street Lease Agreement dated as of September 1, 1999, by and between the JPFA, as
9 lessor, and the City, as lessee; (iii) the Police Station Lease; (iv) the South Valle Lease Agreement,
10 dated as of September 1, 1999, by and between the JPFA, as lessor, and the City, as lessee; (v) the
11 South Valle Site and Facility Lease, dated as of September 1, 1999, by and between the City, as
12 lessor, and the JPFA, as lessee; (vi) the Agency Agreement, dated as of September 1, 1999, between
13 the City and the RDA; and (vii) the Reimbursement Agreement, dated as of September 29, 1999, by
14 and between the RDA and the City.

15 **11. 1999 Refunding Certificates of Participation Amendment** means the
16 Amendment to the 1999 Trust Agreement and to the Police Station Lease, which will be included as
17 an Exhibit to the Appendix.

18 **12. 1999 Refunding Certificates of Participation Trustee** means U.S. Bank
19 National Association, not individually but as indenture trustee under the 1999 Trust Agreement with
20 respect to the 1999 Refunding Certificates of Participation.

21 **13. 1999 Trust Agreement** means the Trust Agreement, dated as of September 1,
22 1999, between the JPFA, the City and U.S. Bank National Association, as trustee, entered into in
23 connection with the issuance of the 1999 Refunding Certificates of Participation.

24 **14. 415 Trust** means the private trust established pursuant to the City of San
25 Bernardino Excess Benefit Trust Agreement from which the PARS Excess Benefit Plan distributions
26 are made.

27 **15. AB 506** means Assembly Bill 506, as codified at California Government Code
28 § 53760 *et seq.*

1 **16. Administrative Claim** means the costs or expenses of administration of the
2 Bankruptcy Case not already paid by the City that are allowed under Bankruptcy Code section
3 503(b) and entitled to priority under Bankruptcy Code section 507(a)(2) to the extent made
4 applicable in Chapter 9 (i) which the City agrees is an Allowed administrative expense; or (ii) which
5 the Bankruptcy Court determines is an Allowed administrative expense.

6 **17. ADR Procedures** means the alternative dispute resolution procedures, which
7 are included as an Exhibit to the Appendix.

8 **18. Affiliate** has the meaning set forth in Bankruptcy Code section 101(2).

9 **19. Allowed** means, with reference to any Claim, a Claim that

10 (i) is on the List of Creditors (as may be amended from time to time
11 pursuant to Bankruptcy Rule 1009) and is not listed as unliquidated, contingent or disputed on the
12 List of Creditors, and for which no contrary proof of claim has been filed (subject to objection as set
13 forth in the next subsection);

14 (ii) is asserted in a proof of claim filed in compliance with Bankruptcy
15 Code section 501 and any applicable Bankruptcy Court order or designated on the List of Creditors
16 and as to which: (A) no objection has been, or subsequently is, filed, or notice given, within the 180
17 Day Deadline established pursuant to Section X.A of this Plan (as such deadline may be extended by
18 the Bankruptcy Court upon application of the City from time to time); (B) the Bankruptcy Court has
19 entered a Final Order allowing all or a portion of such Claim (but only in the amount so allowed); or
20 (C) the Bankruptcy Court has entered a Final Order under Bankruptcy Code section 502(c)
21 estimating the amount of the Claim for purposes of allowance;

22 (iii) is subject to a stipulation between the City and the holder of such
23 Claim providing for the allowance of such Claim;

24 (iv) is deemed “Allowed” pursuant to the terms of this Plan; or

25 (v) is designated as “Allowed” in a pleading entitled “Designation Of
26 Allowed Claims” (or a similar title) filed with the Bankruptcy Court by the City on or after the
27 Effective Date.
28

1 **20. Appendix** means all of the documents, schedules and exhibits referred to in
2 the Plan and Disclosure Statements as Exhibits thereto, which Appendix will be filed with the Court
3 and distributed along with the Disclosure Statement when the City solicits votes to accept the Plan.

4 **21. Ballot** means the ballot(s), in the form(s) approved by the Bankruptcy Court
5 in the Plan Solicitation Order accompanying the Disclosure Statement and provided to each holder
6 of a Claim entitled to vote to accept or reject this Plan.

7 **22. Bankruptcy Case** means the case under Chapter 9 of the Bankruptcy Code
8 commenced by the City, styled *In re City of San Bernardino, California*, Case No. 6:12-28006-MJ,
9 currently pending in the Bankruptcy Court.

10 **23. Bankruptcy Code** means title 11 of the United States Code, as amended from
11 time to time, as applicable to the Bankruptcy Case.

12 **24. Bankruptcy Court** means the United States Bankruptcy Court for the Central
13 District of California, Riverside Division, or such other court that lawfully exercises jurisdiction
14 over the Bankruptcy Case.

15 **25. Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure, as
16 amended from time to time, as applicable to the Bankruptcy Case, together with the local rules of the
17 Bankruptcy Court applicable to the Bankruptcy Case. Unless otherwise indicated, references in this
18 Plan to “Bankruptcy Rule _____” are to the specifically identified rule of the Federal Rules of
19 Bankruptcy Procedure.

20 **26. Bar Date** means the applicable date by which a particular proof of claim must
21 be filed, as established by the Bankruptcy Court. There may be multiple Bar Dates for various types
22 or classes of claims.

23 **27. BICEP** means the Big Independent Cities Excess Pool Joint Powers
24 Authority.

25 **28. BICEP Agreement** means the BICEP Master Memorandum of Liability
26 Coverage between the City and BICEP and the exhibits and schedules evidencing the terms
27 thereunder.

28 **29. Burgess** means Tim Burgess.

1 **30. Burgess Claims** means the claims of Burgess arising under the Burgess
2 Documents.

3 **31. Burgess Documents** means the transaction documents entered into in
4 connection with the City’s financed acquisition of the real property located at 120 South D Street in
5 San Bernardino, including: the Purchase and Sale Agreement; the San Bernardino City Fire
6 Department Maintenance Facility Note in the original principal sum of \$1,200,000 (the “Burgess
7 Note”); the Indenture and Loan Agreement, and a Deed of Trust, Security Agreement, Assignment
8 of Leases and Rents, and Financing Statement.

9 **32. Business Day** means a day other than a Saturday, a Sunday, or any other day
10 on which banking institutions in Los Angeles, California, are required or authorized to close by law
11 or executive order.

12 **33. CalPERS** means the California Public Employees’ Retirement System.

13 **34. CalPERS Claims** means the claims of CalPERS arising out of the City’s
14 relationship with CalPERS and participation in the CalPERS system, including its contracts with
15 CalPERS and applicable laws and regulations, as applied or interpreted pursuant to applicable
16 provisions of California law, and any other claims asserted by CalPERS against the City, including
17 under the Mediator’s Order.

18 **35. Cash** means cash and cash equivalents, including withdrawable bank deposits,
19 wire transfers, checks, and other similar items.

20 **36. Charter** means the Charter of the City of San Bernardino, State of California,
21 as is currently in effect, and any amendments, replacements or changes thereto.

22 **37. Charter Committee** means the committee established by the City to draft a
23 proposed revised and/or replacement Charter for consideration by the City’s voters (not the voters
24 under this Plan).

25 **38. CIEDB** means the California Infrastructure and Economic Development
26 Bank.

1 **39. CIEDB Documents** means the transaction documents pursuant to which
2 CIEDB provided bond financing to the City to fund the City's (i) \$2 million Harriman Project, (ii)
3 \$10 million Pavement Project, and (iii) \$2.55 million Verdemont Fire Station Project.

4 **40. City** means the City of San Bernardino, California, the debtor in the
5 Bankruptcy Case.

6 **41. City Hall Lease** means the Lease Agreement dated as of December 1, 1996,
7 by and between the JPFA, as lessor, and the City, as lessee.

8 **42. Claim** has the meaning set forth in Bankruptcy Code section 101(5).

9 **43. Class** means any group of Claims classified herein pursuant to Bankruptcy
10 Code section 1123(a).

11 **44. Common Council** means the duly elected legislative body of the City, often
12 referred to as the City Council.

13 **45. Confirmation Date** means the date on which the Clerk of the Bankruptcy
14 Court enters the Confirmation Order on the Docket.

15 **46. Confirmation Hearing** means the hearing to be conducted by the Bankruptcy
16 Court regarding confirmation of this Plan, as such hearing may be adjourned, reconvened or
17 continued from time to time.

18 **47. Confirmation Order** means the order of the Bankruptcy Court confirming
19 this Plan pursuant to Bankruptcy Code section 943.

20 **48. Consenting Union** means those formally recognized bargaining units of City
21 employees that have entered into modified or new collective bargaining agreements, Memoranda of
22 Understanding or letter agreements with the City or that will have entered into such prior to the
23 confirmation of this Plan.

24 **49. Consenting Union Claims** means the Allowed Claims of the Consenting
25 Unions and the employees represented by such unions arising in connection with modifications to
26 the terms and conditions of employment of the represented employees that gave rise to Claims, in
27 the amount stipulated by the City and the Consenting Union.
28

1 **50. Contract Rejection Claim** means a claim arising from the rejection of an
2 executory contract or unexpired lease of non-residential real property.

3 **51. Convenience Class Claim** means any Allowed Claim that is greater than zero
4 but is equal to or less than \$100 in Allowed amount or irrevocably reduced to \$100 in Allowed
5 amount at the election of the holder of the Allowed Claim as evidenced by the Ballot submitted by
6 such holder; *provided, however*, that an Allowed Claim may not be subdivided into multiple Claims
7 of \$100 or less for purposes of receiving treatment as a Convenience Class Claim.

8 **52. CSWRCB Revenue Bond Claim** means the secured claim asserted by the
9 California State Water Resources Control Board in the proof of claim marked as document number
10 311 in the register of claims and filed February 6, 2014.

11 **53. CSWRCB Revenue Bond** means the bond, issued on or about April 1, 2000,
12 reflecting the City's assignment of a portion of obligations under the State Revolving Fund Loan,
13 originally executed on or about April 12, 1994, by and between the State Water Resources Control
14 Board and the Santa Ana Watershed Project Authority, for the construction of a Regional Tertiary
15 Treatment System.

16 **54. Disallowed** means a Claim or portion thereof that: (i) is disallowed by a Final
17 Order of the Bankruptcy Court; (ii) is on the List of Creditors (as amended from time to time in
18 accordance with Bankruptcy Rule 1009): (A) in the amount of \$0.00; or (B) as contingent, disputed,
19 or unliquidated; and as to which no proof of claim has been filed by the applicable Bar Date; (iii)
20 the holder has agreed is equal to \$0.00 or is to be withdrawn, disallowed or expunged; or (iv) is not
21 on the List of Creditors and as to which no proof of claim has been filed by the applicable Bar Date.

22 **55. Disclosure Statement** means the Third Amended Disclosure Statement, and
23 all exhibits and schedules incorporated therein, as approved by the Bankruptcy Court pursuant to
24 Bankruptcy Code section 1125 (made applicable to this Bankruptcy Case pursuant to 11 U.S.C.
25 § 901(a)), in an order entered on July 7, 2016 (Docket No. 1874), as the same may be amended,
26 modified, or supplemented in accordance with the Bankruptcy Code.

27 **56. Disputed Claim** means any Claim or portion thereof that has not become
28 Allowed and that is not Disallowed. In the event that any part of a Claim is a Disputed Claim,

1 except as otherwise provided in this Plan, such Claim shall be deemed a Disputed Claim in its
2 entirety for purposes of distribution under this Plan unless the City otherwise agrees in writing in its
3 sole discretion. Without limiting the foregoing, a Claim that is the subject of a pending application,
4 motion, complaint, objection, or any other legal proceeding seeking to disallow, limit, reduce,
5 subordinate, or estimate such Claim shall be deemed to be a Disputed Claim.

6 **57. Docket** means the docket of the Bankruptcy Case maintained by the Clerk of
7 the Bankruptcy Court and, unless otherwise indicated, “Docket No.” references mean to that Docket.

8 **58. Effective Date** means the first Business Day after the Confirmation Date on
9 which the conditions specified in Section XIII.B of this Plan have been satisfied or waived.

10 **59. Eligibility Contest** means, collectively, the proceedings on the City’s
11 eligibility to be a debtor under Chapter 9 of the Bankruptcy Code and the related pleadings,
12 arguments, formal and informal discovery, hearings, orders and appeals.

13 **60. Employee Wage and Benefit Claims** means the claims of current and former
14 employees of the City and their collective bargaining representatives for unpaid wages and benefits,
15 but not including Claims included in any other category of Claims.

16 **61. Exculpated Party** means the Entities referred to in Section XI.E of this Plan.

17 **62. Final Order** means a judgment, order, ruling, or other decree issued and
18 entered by the Bankruptcy Court which judgment, order, ruling, or other decree has not been
19 reversed, stayed, modified, or amended and as to which: (i) the time to appeal or petition for review,
20 rehearing, or certiorari has expired and no appeal or petition for review, rehearing, or certiorari is
21 then pending; or (ii) any appeal or petition for review, rehearing, or certiorari has been finally
22 decided and no further appeal or petition for review, rehearing, or certiorari can be taken or granted.

23 **63. Financial Model** means the City’s Long Term 20-Year Financial Model (the
24 “Financial Model”) in support of the financial feasibility of the Plan that is attached as an Exhibit in
25 the Appendix.

26 **64. Fire Alerting System Financing Agreement** means the Master Equipment
27 Lease/Purchase Agreement entered into as of December 16, 2009, between the City and Western
28

1 Alliance (as assignee of Bank of America, National Association), with respect to certain equipment
2 and fire station alerting systems for twelve of the City's fire stations and one dispatch center.

3 **65. Franchise Agreements** means the franchise agreements to which the City is a
4 party, and which were entered into prior to the Petition Date between the City and certain utility and
5 similar service providers.

6 **66. General Fund** means the City's chief operating fund, which is used to
7 account for all financial resources except those required to be accounted for in another fund (such as
8 the Restricted Funds).

9 **67. General Unsecured Claim** means a Claim of a general unsecured creditor of
10 the City, and General Unsecured Claims include all claims except Administrative Claims,
11 Professional Claims, Secured Claims, CalPERS Claims, POB Claims, Class 9 PARS Claims,
12 Convenience Class Claims, those Claims payable from a Restricted Fund, and those Claims relating
13 to the 1996 Refunding Bonds or the 1999 Refunding Certificates of Participation. General
14 Unsecured Claims includes, without limitation, the SBCPF General Unsecured Claim, Retiree
15 Health Benefit Claims, Consenting Union Claims, Employee Wage and Benefit Claims, Contract
16 Rejection Claims, Litigation Claims, Other Post-petition Claims, all Claims of pre-petition vendors
17 and service providers to the City, and the unsecured and/or deficiency portion, if any, of the claims
18 of the holders of the Claims in Classes 1 through 6. As a result of the settlements that the City has
19 entered into with the official Retiree Committee and with each of the unions representing City
20 employees, the Class 10 Consenting Union Claims and Class 11 Retiree Health Benefit Claims are
21 fully included in Class 13 General Unsecured Claims for all purposes, including voting on the Plan
22 and claim treatment under the Plan.

23 **68. Harriman Project** means the "Harriman Place Street Extension Project –
24 Phase I," a \$2,000,000 project to extend the eastern end of Harriman Place to align with a nearby
25 intersection, in order to facilitate the development of a regional commercial shopping center and the
26 improvement of a local blighted area.

27 **69. HUD** means the U.S. Department of Housing and Urban Development.
28

1 **70. Impaired** means a Claim or interest that is impaired within the meaning of
2 Bankruptcy Code section 1124.

3 **71. Impositions** means those modified terms and conditions of employment
4 implemented by the City pursuant to Common Council Resolutions 2013-19, 2013-20 and 2014-364,
5 and additional modifications, if any, to the terms and conditions of employment implemented by the
6 City, that are in place on the Confirmation Date, including pursuant to this Plan.

7 **72. Indemnification** means rights of indemnity, defense, reimbursement, and
8 advancement of fees and expenses of current and former officers and employees of the City with
9 respect to any claims or lawsuits brought against such officers and employees by third parties, in
10 each case arising out of an act or omission occurring within the scope of such officer's or
11 employee's employment as an employee of the City.

12 **73. Indemnified Parties** means the current and former officers and employees of
13 the City who are entitled to Indemnification.

14 **74. Insured Portion** means that portion of any Workers Compensation Claim that
15 is covered by one or more of the City's insurance policies or one or more of the risk-sharing or
16 excess risk sharing pools of which the City is a member, up to the amount of the policy limits,
17 including any excess coverage policies.

18 **75. JPFA** means the San Bernardino Joint Powers Financing Authority.

19 **76. Litigation Claims** means (a) those lawsuits against the City that are still
20 pending as of the Confirmation Date, including those listed in Exhibit 6 to the Appendix;
21 (b) those lawsuits against the City that are filed on or after the Confirmation Date based on acts,
22 claims or omissions that occurred or arose prior to the Confirmation Date; and (c) those lawsuits
23 against any of the Indemnified Parties, whether filed prior to the Confirmation Date or on or after
24 the Confirmation Date based on acts, claims or omissions that occurred or arose prior to the
25 Confirmation Date, as to which lawsuits the City has assumed or will assume the defense thereof and
26 became or becomes obligated to pay any judgment arising therefrom pursuant to Cal. Government
27 Code §§ 825, 970, 995 and 996 and any other applicable law or rule.
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1 **77. List of Creditors** means the First Amended List of Creditors filed by the City
2 on November 8, 2013 (Docket No. 869), as such list may be amended, supplemented or otherwise
3 modified.

4 **78. Mediator's Order** means the order issued on June 9, 2014 by the Honorable
5 Gregg W. Zive, U.S. Bankruptcy Judge for the District of Nevada (acting as the court-appointed
6 mediator), evidencing the agreement between the City and CalPERS regarding the treatment of the
7 CalPERS Claims under the Plan and certain other agreements.

8 **79. MOU** means a Memorandum of Understanding comprising a collective
9 bargaining agreement between the City and a union representing City employees.

10 **80. National** means National Public Finance Guarantee Corporation, a New York
11 stock insurance corporation.

12 **81. Notice of the Effective Date** shall have the meaning ascribed to such phrase
13 in Section XIV.F of this Plan.

14 **82. Objection Deadline** means the deadline fixed by the Bankruptcy Court for
15 filing objections to confirmation of this Plan.

16 **83. Other Post-petition Claims** means unpaid Claims asserted against the City
17 for services rendered to, goods delivered to or obligations incurred by the City after the Petition Date
18 that do not constitute Administrative Claims.

19 **84. PARS Claim** means the Claims of the PARS Participants in respect of: (a) the
20 funds in the PARS Plans, which is a Class 9 PARS Claim; and (b) any other obligation of the City
21 under the PARS Plans, including claims for payment of any unfunded liability.

22 **85. PARS Enhancement Plan** means the City of San Bernardino Public Agency
23 Retirement System Retirement Enhancement Plan, which was amended and restated effective July 1,
24 2007.

25 **86. PARS Excess Benefit Plan** means the City of San Bernardino Excess Benefit
26 Plan, effective January 1, 2008.

27 **87. PARS Participant** means a participant in either the PARS Enhancement Plan
28 or the PARS Excess Benefit Plan.

1 **88. PARS Plans** means, collectively, the PARS Enhancement Plan and the PARS
2 Excess Benefit Plan.

3 **89. PARS Trust** means the trust, related to a multi-employer plan PARS Trust
4 Agreement to which the City, along with other municipalities, is a party, from which the
5 distributions under the PARS Enhancement Plan are paid.

6 **90. PARS Settlement** means the Settlement Agreement between the City and the
7 PARS Participants, dated as of April 20, 2016.

8 **91. Pavement Project** means the “Pavement Reconstruction and Rehabilitation
9 Project,” a \$10,000,000 project to finance the construction, acquisition and installation of pavement
10 in or around the public streets throughout the City.

11 **92. Petition Date** means August 1, 2012.

12 **93. Plan** means this *Third Amended Plan for the Adjustment of Debts of the City*
13 *of San Bernardino, California (July 29, 2016), as Modified* together with any exhibits hereto
14 (including those attached as exhibits to the Appendix), each in their present form or as they may be
15 altered, amended or modified from time to time in accordance with the provisions of this Plan, the
16 Confirmation Order, the Bankruptcy Code, and the Bankruptcy Rules.

17 **94. Plan Document** means (a) the documents referenced in this Plan as such, a
18 copy of which will be attached as an Exhibit to the Appendix, or (b) any other document entered into
19 in connection with and pursuant to this Plan, that is in form and substance acceptable to the City, has
20 been duly and validly executed and delivered, or deemed executed by the parties thereto, and for
21 which all conditions to its effectiveness have been satisfied or waived.

22 **95. Plan Solicitation Order** means the *Order: (A) Approving Third Amended*
23 *Disclosure Statement With Respect to the Third Amended Plan for the Adjustment of Debts (May 27,*
24 *2016); and (B) Setting Certain Deadlines Regarding Voting to Accept or Reject the Third Amended*
25 *Plan and Related Matters* (Docket No. 1874, entered on July 7, 2016), by which the Bankruptcy
26 Court approved the Disclosure Statement as containing adequate information for the purpose of
27 dissemination and solicitation of votes on and confirmation of this Plan and established certain rules,
28 deadlines, and procedures for the solicitation of votes with respect to and the balloting on this Plan.

1 **96. POBs** mean the Series A-1 and Series A-2 Taxable Pension Obligation Bonds
2 issued by the City pursuant to a Trust Agreement dated October 1, 2005.

3 **97. POB Claims** means those Allowed Claims of the holders of the outstanding
4 POBs.

5 **98. POB Creditors** means the holders of the POB Claims.

6 **99. POB Settlement Agreement** means the comprehensive settlement regarding
7 the treatment of the POB Claims entered into by the City and the POB Creditors in March 2016.

8 **100. Police Station Lease** means the Police Station Lease Agreement, dated as of
9 September 1, 1999, by and between the JPFA, as lessor, and the City, as lessee.

10 **101. Police Station AC Financing Agreement** means the Master Equipment
11 Lease/Purchase Agreement entered into as of October 1, 2004, between the City and Western
12 Alliance (as assignee of Koch Financial Corporation), with respect to four water-cooled air
13 conditioners in use in the City's police headquarters.

14 **102. Pre-Confirmation Date Claims** means all Claims against the City that arose
15 prior to the Confirmation Date.

16 **103. Professional Claim** means a Claim of professionals for unpaid services and
17 costs during the Bankruptcy Case or incident to the Plan to be paid by the City.

18 **104. RDA** means the former Redevelopment Agency of the City of San Bernardino
19 (also referred to as the Economic Development Agency).

20 **105. Reinsurance Policies** means the reinsurance policies between BICEP and
21 certain insurance companies indemnifying BICEP for losses covered by the BICEP Agreement.

22 **106. Restricted Funds** means those funds whose use is restricted by applicable
23 law for a particular purpose or otherwise legally restricted by their providers (such as grantors,
24 bondholders and other governmental units).

25 **107. Restricted Revenue Bond and Note Payable Obligations** means any and all
26 bond and/or note payable obligations that are secured by a pledge of and lien on "restricted" and/or
27 "special" revenues (as defined in Bankruptcy Code section 902(2)), including the 1998 Refunding
28 Certificates of Participation and the CSWRCB Revenue Bond Claim, and including obligations that

1 arise pursuant to all installment purchase agreements, security agreements, trust indentures,
2 reimbursement agreements, fee letters, and other agreements with respect thereto to which the City is
3 a party and which are payable from and secured by special and restricted sources of revenues.

4 **108. Retirees** means those retirees of the City that are covered by the Retiree
5 Settlement.

6 **109. Retiree Committee** means the Official Committee of Retirees, appointed in
7 the Bankruptcy Case on October 11, 2013 [Docket No. No. 828], by the Office of the United States
8 Trustee pursuant to Bankruptcy Code sections 1102(a)(1) and 1102(b)(1), as the membership thereof
9 may have been reconstituted from time to time by the Office of the United States Trustee, which
10 represents only the interests of retirees from the City and does not represent current employees or
11 any other creditors.

12 **110. Retiree Health Benefit Claims** means those Allowed Claims of the Retirees
13 pursuant to the Retiree Settlement based upon modifications to retiree health benefits.

14 **111. Retiree Settlement** means the settlement entered into between the City and
15 the Retiree Committee on behalf of the Retirees.

16 **112. Rights of Action** means any claims, causes of action, rights of recovery,
17 rights of offset or recoupment, defenses, rights to refunds, and similar rights owned by, accruing to,
18 or assigned to the City pursuant to the Bankruptcy Code or pursuant to any contract, statute, or legal
19 theory, including without limitation any rights to, claims, or causes of action for recovery under any
20 (i) policies of insurance issued to or on behalf of the City or (ii) any pooling arrangements that the
21 City participates in (including with BICEP).

22 **113. Rust Omni** means Rust Consulting/Omni Bankruptcy, the ballot tabulator in
23 the Bankruptcy Case.

24 **114. SBCPF** means the San Bernardino City Professional Firefighters, Local 891.

25 **115. SBCPF General Unsecured Claim** means the Consenting Union Claim of
26 the SBCPF and its current and former members in the amount of \$14 million pursuant to the SBCPF
27 Settlement Agreement (described therein as the Fire Union General Unsecured Claim) which claim
28 shall be treated as a Class 13 General Unsecured Claim for all purposes.

1 **116. SBCPF Settlement Agreement** means the Settlement Agreement and Release
2 dated as of February 8, 2016 among the City, the SBCPF and certain members of the SBCPF.

3 **117. Secured Claim** means a Claim that is secured (i) by a lien that is not subject
4 to avoidance or subordination under the Bankruptcy Code or applicable non-bankruptcy law; or
5 (ii) as a result of rights of setoff under section 553; but in any event only to the extent of the value,
6 determined in accordance with Bankruptcy Code section 506(a), of the holder's interest in the City's
7 interest in property or to the extent of the amount subject to such setoff, as the case may be.

8 **118. State** means the state of California, unless otherwise indicated.

9 **119. Unimpaired** means a Claim that is not Impaired within the meaning of
10 Bankruptcy Code section 1124.

11 **120. Uninsured Portion** means the amount in excess of the Insured Portion of an
12 Allowed Workers Compensation Claim.

13 **121. Verdemont Fire Station Project** means the "Verdemont Fire Station
14 Project," a \$2,550,000 project to finance the construction, acquisition and installation of the
15 Verdemont Fire Station, located on real property owned by the City, as well as the purchase of two
16 new fire engines.

17 **122. Water Department** means the San Bernardino Municipal Water Department.

18 **123. Water Funds** means funds received by the City/Water Department in the
19 form of bank accounts, cash, investments or otherwise derived from any or all of the following
20 sources: (i) the payments from rate payers for water and water related services; (ii) any reasonable
21 reserves held by or for the Water Department; (iii) proceeds of any water bond issuances, including,
22 without limitation the 1998 Sewer Bonds; (iv) the monies paid pursuant to the settlement agreement
23 between the City and the United States pursuant to *State of California Department of Toxic*
24 *Substances Control v. United States Department of the Army*, United States District Court Case No.
25 96-5205(MRP) consolidated with *City of San Bernardino Municipal Water Department v. United*
26 *States Department of the Army*, United States District Court Case No. 96- 8867(MRP); and (v) any
27 water related development fees or water related capital fees.
28

1 **124. Western Alliance** means Western Alliance Equipment Finance, Inc. or any
2 assignee thereof.

3 **125. Workers' Compensation Claims** means those Claims pursuant to California
4 workers compensation law (California Labor Code section 3200 *et seq.*) of current and former City
5 employees who have suffered an eligible injury while employed by the City.

6 **C. Computation of Time.**

7 In computing any period of time prescribed or allowed by this Plan, the provisions of
8 Bankruptcy Rule 9006(a) apply.

9 **II. TREATMENT OF ADMINISTRATIVE CLAIMS AND PROFESSIONAL CLAIMS**

10 **A. Treatment of Administrative Claims.**

11 Except to the extent that the holder of an Allowed Administrative Claim agrees to a different
12 treatment, the City or its agent shall pay to each holder of an Allowed Administrative Claim, in full
13 satisfaction, release, and discharge of such Allowed Administrative Claim, Cash in an amount equal
14 to such Allowed Administrative Claim on the later of (i) the Effective Date or (ii) the date on which
15 such Claim becomes an Allowed Administrative Claim, or as soon thereafter as is practicable. The
16 City's consent to the Bankruptcy Court adjudicating Administrative Claim status is given without
17 the City in any way consenting or agreeing that Claims for post-petition obligations of the City are
18 or would be entitled to status as Administrative Claims as "the actual necessary costs and expenses
19 of preserving the estate" under Bankruptcy Code section 503(b), and the City reserves its right to
20 maintain that such Claims are Other Post-petition Claims under this Plan.

21 **B. Deadline for the Filing and Assertion of Administrative Claims.**

22 All requests for payment or any other means of preserving and obtaining payment of
23 Administrative Claims that have not been paid, released, or otherwise settled, must be filed with the
24 Bankruptcy Court and served upon the City no later than 30 days after the date on which the Notice
25 of Effective Date is served. Any proof of claim for payment of an Administrative Claim, that is not
26 timely filed by such date will be forever barred, and holders of such Claims shall be barred from
27 asserting such Claims in any manner against the City
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1 **C. Treatment of Professional Claims.**

2 Professional Claims are claims of professionals for unpaid services and costs during the
3 Bankruptcy Case or incident to the Plan to be paid by the City. Bankruptcy Code section 943(b)(3)
4 provides that, in order to confirm the Plan, all amounts to be paid by the City for services or
5 expenses incurred in the Bankruptcy Case, or incident to the Plan, must be fully disclosed and must
6 be reasonable. After the Effective Date, there will be paid to each holder of a Professional Claim, in
7 full satisfaction, release, and discharge of such Claim, Cash in an amount equal to the amount the
8 Bankruptcy Court determines is reasonable. The City, in the ordinary course of its business, and
9 without the requirement for Bankruptcy Court approval, may pay for professional services that are
10 rendered and costs that are incurred following the Effective Date.

11 **D. Priority Claims in Chapter 9.**

12 The only priority claims incorporated into Chapter 9 through Bankruptcy Code section 901
13 are Administrative Claims allowed under Bankruptcy Code section 503(b) and entitled to priority
14 under Bankruptcy Code section 507(a)(2). The treatment of all such Administrative Claims is set
15 forth immediately above in Sections II.A and II.B. No other kinds of priority claims set forth in
16 Bankruptcy Code section 507 are recognized in this Bankruptcy Case, and Claims that are not
17 Administrative Claims herein and that would constitute administrative expenses in a case under
18 another chapter of the Bankruptcy Code, including Other Post-petition Claims, are treated in Chapter
19 9 and in this Plan as General Unsecured Claims.

20 **III. DESIGNATION OF CLASSES OF CLAIMS**

21 Pursuant to Bankruptcy Code sections 1122 and 1123(a)(1), all Claims other than
22 Administrative Claims and Professional Claims are classified for all purposes, including voting,
23 confirmation, and distribution pursuant to this Plan, as follows:

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- | | | |
|---------------------|---|------------------------|
| 25 <u>Class 1</u> - | 1996 Refunding Bonds Claims | (Impaired/Voting) |
| 26 <u>Class 2</u> - | 1999 Refunding Certificates of Participation Claims | (Impaired/Voting) |
| 27 <u>Class 3</u> - | Secured Claims: CIEDB Harriman Project Claims | (Unimpaired/Nonvoting) |
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- Class 4 - Secured Claims: CIEDB Pavement Project Claims (Unimpaired/Nonvoting)
- Class 5 - Secured Claims: Police Station AC Financing Claims (Impaired/Voting)
- Class 6 - Secured Claims: Burgess Claims (Impaired/Voting)
- Class 7 - Claims on Restricted Revenue Bond and Note Payable Obligations (Unimpaired/Nonvoting)
- Class 8 - CalPERS Claims (Unimpaired/Nonvoting)
- Class 9 - PARS Claims (Impaired/Voting)
- Class 10 - Consenting Union Claims (Impaired/Voting)
- Class 11 - Retiree Health Benefit Claims (Impaired/Voting)
- Class 12 - POB Claims (Impaired/Voting)
- Class 13 - General Unsecured Claims (Impaired/Voting)
- Class 14 - Convenience Class Claims (Impaired/Voting)

IV. TREATMENT OF CLAIMS

A. Class 1 – 1996 Refunding Bonds Claims

Impairment and Voting. Class 1 is Impaired by this Plan because the treatment of this Class will affect the legal, equitable, or contractual rights of the holders of the Claims. Accordingly, National, as the deemed holder of the Claims in this Class, is entitled to vote to accept or reject this Plan.

Treatment. Subject to the terms and conditions of the 1996 Refunding Bonds Amendment, on the Effective Date, the 1996 Trust Indenture and the City Hall Lease will be amended and supplemented. In addition, in connection with the 1996 Refunding Bonds Amendment, the City will assume the 1996 Refunding Bond Agreements (City Hall) and will cure, or provide adequate assurance for the prompt cure, of all defaults under the 1996 Refunding Bond Agreements (City Hall) that are required to be cured under section 365(b)(1)(A) of the Bankruptcy Code. The effectiveness of the 1996 Refunding Bonds Amendment will also be subject to a number of terms and conditions as set forth therein. Subject to the 1996 Refunding Bonds Amendment, the 1996 Refunding Bonds Trustee shall retain all of its rights, remedies, security interests and collateral

1 under the 1996 Trust Indenture, as amended, and any bonds, notes, security agreements, or any other
2 instruments or agreements executed in connection with the 1996 Refunding Bonds or otherwise
3 providing, granting or perfecting a lien in connection with the 1996 Refunding Bonds.

4 **B. Class 2 – 1999 Refunding Certificates of Participation Claims**

5 **Impairment and Voting.** Class 2 is Impaired by this Plan because the treatment of this
6 Class will affect the legal, equitable, or contractual rights of the holders of the Claims. Accordingly,
7 National, as the deemed holder of the Claims in this Class, is entitled to vote to accept or reject this
8 Plan.

9 **Treatment.** Subject to the terms and conditions of the 1999 Refunding Certificates of
10 Participation Amendment, on the Effective Date, the 1999 Trust Agreement and the Police Station
11 Lease will be amended and supplemented. Pursuant to the 1999 Refunding Certificates of
12 Participation Amendment, on the Effective Date, funds from the “Reserve Fund” (in excess of the
13 “Reserve Requirement”) and the “Capital Reserve Fund” (as such terms are defined in the 1999
14 Trust Agreement) will be used to pay in full all remaining lease payments due from the City under
15 the Police Station Lease. In addition, pursuant to Section 10.02 of the Police Station Lease, the City
16 will give notice of an optional redemption of the 1999 Refunding Certificates of Participation in an
17 amount equal to the amount of the Police Station Lease prepayment hereunder, with such
18 redemption to occur at the earliest practicable date following the occurrence of the Effective Date.
19 Such notice will specify the order of redemption of the 1999 Refunding Certificates of Participation,
20 which order will ensure that the remaining payments required to be made by the City under the 1999
21 Refunding Certificates of Participation Agreements (Police Station/201 North E Street/South Valle)
22 will be sufficient to pay the principal of and interest on the 1999 Refunding Certificates of
23 Participation when due, as certified by an independent financial consultant of the City reasonably
24 acceptable to National and the 1999 Refunding Certificates of Participation Trustee. On the
25 Effective Date, the City will deposit the proceeds of the prepayment of the Police Station Lease with
26 the 1999 Refunding Certificates of Participation Trustee to hold in trust pursuant to the terms of the
27 1999 Trust Agreement pending the redemption of the 1999 Refunding Certificates of Participation
28 required hereunder.

1 In connection with the 1999 Refunding Certificates of Participation Amendment, the City
2 will also assume the 1999 Refunding Certificates of Participation Agreements (Police Station/201
3 North E Street/South Valle), including the Police Station Lease, as amended by the 1999 Refunding
4 Certificates of Participation Amendment, and will cure, or provide adequate assurance for the
5 prompt cure, of all defaults under the 1999 Refunding Certificates of Participation Agreements
6 (Police Station/201 North E Street/South Valle) that are required to be cured under section
7 365(b)(1)(A) of the Bankruptcy Code. The effectiveness of the 1999 Refunding Certificates of
8 Participation Amendment will also be subject to a number of terms and conditions, as set forth
9 therein. Subject to the 1999 Refunding Certificates of Participation Amendment, the 1999
10 Refunding Certificates of Participation Trustee shall retain all of its rights, remedies, security
11 interests and collateral (other than with respect to the Police Station) under the 1999 Trust
12 Agreement, as amended, and any bonds, notes, security agreements, or any other instruments or
13 agreements executed in connection with the 1999 Refunding Certificates of Participation or
14 otherwise providing, granting or perfecting a lien in connection with the 1999 Refunding Certificates
15 of Participation.

16 **C. Class 3 – Secured Claims: CIEDB Harriman Project Claims**

17 **Impairment and Voting.** Class 3 is not Impaired by this Plan because the treatment of this
18 Class will not affect the legal, equitable, or contractual rights of the holders of the Claims.
19 Accordingly, the holders of Claims in this Class are not entitled to vote to accept or reject this Plan.

20 **Treatment.** The Claims of CIEDB in respect of the Harriman Project will be paid in
21 accordance with those CIEDB Documents relating to the CIEDB’s financing of the Harriman
22 Project.

23 **D. Class 4 – Secured Claims: CIEDB Pavement Project Claims**

24 **Impairment and Voting.** Class 4 is not Impaired by this Plan because the treatment of this
25 Class will not affect the legal, equitable, or contractual rights of the holders of the Claims.
26 Accordingly, the holders of Claims in this Class are not entitled to vote to accept or reject this Plan.

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1 **Treatment.** The Claims of CIEDB in respect of the Pavement Project will be paid in
2 accordance with those CIEDB Documents relating to the CIEDB’s financing of the Pavement
3 Project.

4 **E. Class 5 – Secured Claims: Police Station AC Financing Claims**

5 **Impairment and Voting.** Class 5 is Impaired by this Plan because the treatment of this
6 Class will affect the legal, equitable, or contractual rights of the holders of the Claims, and,
7 accordingly, the holders of the Claims in this Class are entitled to vote to accept or reject this Plan.

8 **Treatment.** The collateral securing the Western Alliance Claim will be returned to Western
9 Alliance and Western Alliance shall have a Class 13 General Unsecured Claim in the approximate
10 amount of \$475,000 which will receive a 1% distribution. Western Alliance may leave the Police
11 Station ACs on City property (or property controlled by the City) without any liability to the City,
12 and if so, the Police Station ACs shall be deemed abandoned to the City, without any City liability to
13 Western Alliance.

14 **F. Class 6 – Secured Claims: Burgess Claims**

15 **Impairment and Voting.** Class 6 is Impaired by this Plan because the treatment of this
16 Class will affect the legal, equitable, or contractual rights of the holders of the Burgess Claims, and,
17 accordingly, the holders of the Burgess Claims are entitled to vote to accept or reject this Plan.

18 **Treatment.** The maturity date with respect to the Burgess Documents is in 2019, at which
19 time a large balloon payment (approximately \$1.1 million) is due to Burgess. Under the Plan, the
20 Burgess Documents will be amended to extend the maturity date until 2022, and the balloon
21 payment will be amortized over that 3-year period with interest continuing to accrue through the new
22 maturity date on the unpaid principal balance at the current interest rate set forth in the Note (5%)
23 which will be paid on January 1 and July 1 of each year of the 3 year extension period. The Burgess
24 Documents will also be amended to provide that Burgess has granted the City the option until April
25 30, 2017 to pay the principal amount due under the Note at a 10% discount (the “Discounted
26 Payoff”), plus all accrued and unpaid interest at the rate set forth in the Note through the date that the
27 Discounted Payoff payment is made. The City exercised its option to make the Discounted Payoff
28

1 payment in June 2016, and then conveyed the Fire Maintenance Facility to the County Fire District
2 in connection with annexation of the City into the County Fire District.

3 **G. Class 7 – Claims on Restricted Revenue Bond and Note Payable Obligations**

4 **Impairment and Voting.** Class 7 is not Impaired by this Plan because the treatment of this
5 Class will not affect the legal, equitable, or contractual rights of the holders of the Claims.
6 Accordingly, the holders of Claims in this Class are not entitled to vote to accept or reject this Plan.

7 **Treatment.** Claims on Restricted Revenue Bond and Note Payable Obligations, including
8 Claims under the 1998 Refunding Certificates of Participation and the CSWRCB Revenue Bond
9 Claim, are secured by a pledge of and lien on revenues of several of the City’s systems and
10 enterprises, which are restricted revenues and “special revenues” as defined in Bankruptcy Code
11 section 902(2). The City will pay Restricted Revenue Bond and Notes Payable Obligations in the
12 ordinary course of business pursuant to the applicable documents (which will be assumed by the
13 City on the Effective Date, with any defaults, to the extent any defaults exist as of the Effective
14 Date, that are required to be cured under section 365(b)(1)(A) of the Bankruptcy Code cured, or
15 adequate provision made for the prompt cure thereof). In April 2016, (a) the 1998 Refunding
16 Certificates of Participation were defeased and paid in full, in the approximate amount of
17 \$3.4 million, and (b) the final amount outstanding on the CSWRCB Revenue Bond Claim, in the
18 approximate amount of \$1.7 million, was repaid.

19 **H. Class 8 – CalPERS Claims**

20 **Impairment and Voting.** Class 8 is not Impaired by this Plan because the treatment of this
21 Class will not affect the legal, equitable, or contractual rights of the holder of such Claims, and,
22 accordingly, the holders of the Claims in this Class are not entitled to vote to accept or reject this
23 Plan.

24 **Treatment.** The CalPERS Claims will be paid in accordance with the Mediator’s Order.
25 Notwithstanding anything in this Plan to the contrary, nothing in this Plan is intended to or does
26 impair or interfere with the rights of the City and CalPERS under the Mediator’s Order, which is
27 incorporated into this Plan. Without limiting the generality of the forgoing, the City ratifies in full its
28 relationship with CalPERS, and the Plan will not impair the City’s obligations to CalPERS or the

1 CalPERS Claims. In the event that there is any inconsistency between the Mediator's Order and this
2 Plan, the Mediator's Order shall control. Notwithstanding Section XII hereof, except as specifically
3 provided in the Mediator's Order, the City and CalPERS reserve all of their rights with respect to the
4 jurisdiction of the Bankruptcy Court over CalPERS.

5 **I. Class 9 – PARS Claims**

6 **Impairment and Voting.** Class 9 contains the claim of the PARS Participants with respect
7 to the PARS Plans. Class 9 is Impaired by this Plan because the treatment of this Class will affect
8 the legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, the holders
9 of the Claims in this Class are entitled to vote to accept or reject this Plan.

10 **Treatment.** The Class 9 PARS Claims shall be treated in accordance with the PARS
11 Settlement, a copy of which is attached to the Appendix. In accordance with the PARS Settlement,
12 the PARS Plans will be rejected, and the City will waive any and all claims to the funds held within
13 the PARS Trust and the 415 Trust as of the date of termination of the PARS Plans, (ii) the amounts
14 remaining in the PARS Trust and the 415 Trust will be distributed to the PARS Participants pursuant
15 to agreed-upon allocations, and the City will endeavor to make each such distributions in a manner
16 that will minimize adverse tax consequences for each PARS Participant, (iii) the City will make a
17 distribution of \$290,000.00 on the later of the Effective Date or July 5, 2017, and a distribution
18 \$290,000.00 on the later of the Effective Date or July 5, 2018, in each case to the PARS Participants
19 pursuant to agreed-upon allocations, and (iv) the City will be discharged from any and all obligations
20 to further fund any PARS Plan or to make any other distributions on account of the PARS Claims.
21 The Class 9 Claims are Impaired and the holders of the Class 9 Claims are entitled to vote the
22 Claims to accept or reject the Plan.

23 **J. Class 10 – Consenting Union Claims**

24 **Impairment and Voting.** Class 10 is Impaired by this Plan because the treatment of this
25 Class will affect the legal, equitable, or contractual rights of the holders of the Claims, and,
26 accordingly, the holders of the Claims in this Class are entitled to vote to accept or reject this Plan.

27 **Treatment.** Upon reaching agreement with a union representing City employees on the
28 terms of a new or modified memorandum of understanding or similar agreement, such agreement

1 will be reflected in a Plan Document. The Claims of the employees and the formally recognized
2 bargaining agent that are, by agreement, discharged under this Plan, will be included in Class 13
3 General Unsecured Claims and will be treated accordingly. Each of the City's settlements with the
4 Consenting Unions (other than with the SBCPF and Fire Management) contain the following
5 provisions:

- 6 • the MOU will become null and void and of no further effect if the Plan is not
7 confirmed;
- 8 • the Confirmation Order (approving the Plan) shall provide for approval of the
9 settlement and, where applicable, the modified or new Memorandum of
10 Understanding ("MOU"); and
- 11 • all claims of the union and its members with respect to wages, pensions (including
12 implementation of cost sharing and elimination of the employer paid member
13 contribution ("EPMC") benefit, other benefits and other terms and conditions of
14 employment that arose prior to the date of the confirmation of the Plan, including,
15 without limitations, all claims arising from the City's changes to the terms and
16 conditions of employment and/or rejection or the prior MOU (collectively the "union
17 claims"), shall be treated as general unsecured claims under the Plan, and the City and
18 its officers shall be discharged from such union claims upon confirmation of the Plan;
19 *provided, however,* that any claims arising under the settlement or MOU after it is
20 executed by the City and the union (*e.g.* grievances) shall not be discharged as long as
21 (a) the union complies with the terms of the MOU, and (b) the Bankruptcy Court
22 confirms the Plan; and
- 23 • the union and the City shall agree on the amount of the union claims and the union
24 shall vote the union claims as Class 13 General Unsecured Claims in support of the
25 Plan.

26 The Class 10 Consenting Union Claims are General Unsecured Claims and shall be treated as part of
27 Class 13 General Unsecured Claims for all purposes, including for voting on the Plan and payment
28 on the claims.

1 **K. Class 11 – Retiree Health Benefit Claims**

2 **Impairment and Voting.** Class 11 is Impaired by this Plan because the treatment of this
3 Class will affect the legal, equitable, or contractual rights of the holders of the Claims, and,
4 accordingly, the holders of the Claims in this Class are entitled to vote to accept or reject this Plan.

5 **Treatment.** The holders of the Retiree Health Benefit Claims will receive the rights and
6 benefits set forth in the Retiree Settlement, **including that their pension benefits will not be**
7 **modified**, but retiree health benefits will be modified, in accordance with the procedures
8 implemented by the City on January 1, 2015. The Retiree Health Care Claims are the claims of
9 retirees based upon the reduction in retiree health benefits. The Class 11 Retiree Health Benefit
10 Claims are General Unsecured Claims and shall be treated as part of Class 13 General Unsecured
11 Claims for all purposes, including for voting on the Plan and payment on the claims.

12 **L. Class 12 – POB Claims**

13 **Impairment and Voting.** Class 12 is Impaired by this Plan because the treatment of this
14 Class will affect the legal, equitable, or contractual rights of the holders of the Claims. Accordingly,
15 the holders of Claims in this Class are entitled to vote to accept or reject this Plan.

16 **Treatment.** Class 12 is comprised of Claims held by the holders of the outstanding POBs
17 issued by the City in 2005. Under the Plan, the POB Creditors will be paid in accordance with the
18 POB Settlement Agreement, which was entered into between the City and the POB Creditors in
19 March 2016. Pursuant to the terms of that settlement, under the Plan, the City will make installment
20 payments over a thirty-year term, starting one year after the City's chapter 9 plan is confirmed and
21 goes effective. The City will make payments of \$1.6 to \$2.5 million per fiscal year until 2046
22 instead of the \$3.3 million to \$4.7 million per fiscal year owed under the terms of the 2005 pension
23 bond agreement. The entirety of the POB Settlement Agreement is deemed incorporated into the
24 Plan and the Confirmation Order shall expressly approve the POB Settlement Agreement.

25 **M. Class 13 – General Unsecured Claims**

26 **Impairment and Voting.** Class 13 General Unsecured Claims include all claims except
27 Administrative Claims, Professional Claims, Secured Claims, CalPERS Claims, POB Claims, Class
28 9 PARS Claims, Convenience Class Claims, those Claims payable from a Restricted Fund, and those

1 Claims relating to the 1996 Refunding Bonds or the 1999 Refunding Certificates of Participation.
2 General Unsecured Claims includes, without limitation, the SBCPF General Unsecured Claim,
3 Retiree Health Benefit Claims, Consenting Union Claims, Employee Wage and Benefit Claims,
4 Contract Rejection Claims, Litigation Claims, Other Post-petition Claims, all Claims of pre-petition
5 vendors and service providers to the City, and unsecured and/or deficiency portion, if any, of the
6 claims of the holders of the Claims in Classes 1 through 6. As a result of the settlements that the
7 City has entered into with the official Retiree Committee and with each of the unions representing
8 City employees, the Class 10 Consenting Union Claims and Class 11 Retiree Health Benefit Claims
9 are fully included in this Class 13 General Unsecured Claims for all purposes, including voting on
10 the Plan and claim treatment under the Plan. Class 13 is Impaired by this Plan because the treatment
11 of this Class will affect the legal, equitable, or contractual rights of the holders of the Claims.
12 Accordingly, the holders of Claims in this Class are entitled to vote to accept or reject this Plan.

13 **Treatment.** On the Effective Date, or as soon as reasonably practicable after the Effective
14 Date, Holders of Allowed Class 13 Claims will receive a distribution equal to 1% of their Allowed
15 General Unsecured Claims.

16 **N. Class 14 – Convenience Class Claims**

17 **Impairment and Voting.** Class 14 is Impaired by this Plan because the treatment of this
18 Class will affect the legal, equitable, or contractual rights of the holders of the Claims, and,
19 accordingly, the holders of the Claims in this Class are entitled to vote to accept or reject this Plan.

20 **Treatment.** Within 30 days after the Effective Date, each holder of an Allowed
21 Convenience Class Claim will receive the lesser of the Allowed amount of the holder's Allowed
22 Convenience Class Claim or \$100 at the election of the holder of the Allowed Convenience Class
23 Claim.

24 **V. ACCEPTANCE OR REJECTION; CRAMDOWN**

25 **A. Voting of Claims.**

26 Each holder of an Allowed Claim classified into the following Classes shall be entitled to
27 vote each such Claim to accept or reject this Plan: Class 1 – 1996 Refunding Bonds Claims; Class 2
28 – 1999 Refunding Certificates of Participation Claims; Class 5 – Police Station AC Financing

1 Claims; Class 6 – Burgess Claims; Class 9 – PARS Claims; Class 10 – Consenting Union Claims;
2 Class 11 – Retiree Health Benefit Claims; Class 12 – POB Claims; Class 13 – General Unsecured
3 Claims; and Class 14 – Convenience Class Claims.

4 With respect to any Class of Impaired Claims that fails to accept this Plan, the City, as
5 proponent of this Plan, will request that the Bankruptcy Court nonetheless confirm this Plan pursuant
6 to the so-called “cramdown” powers set forth in Bankruptcy Code section 1129(b).

7 **VI. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

8 **A. Assumption of Executory Contracts and Unexpired Leases.**

9 Upon the Effective Date, without the need to file any motions, the City will assume (a) all of
10 the executory contracts and unexpired leases listed in the “List of Assumed Executory Contracts and
11 Unexpired Leases” and in the “List of Assumed and Assigned Executory Contracts and Unexpired
12 Leases,” (b) those contracts and leases specifically provided for in this Plan as being assumed or
13 assumed and assigned, including but not limited to Franchise Agreements that have not been reduced
14 to ordinance, the leases and contracts addressed in Classes 1, 2 and 7 of this Plan, (c) all contracts
15 and leases of the City’s Water Department, and (d) to the extent it is an executory contract governed
16 by the provisions of Section 365 of the Bankruptcy Code, the BICEP Agreement and the CalPERS
17 contract. The City shall be entitled to modify or supplement the List of Assumed Executory
18 Contracts and Unexpired Leases and the List of Assumed and Assigned Executory Contracts and
19 Unexpired Leases any time up to seven days prior to the Confirmation Hearing. The City will not
20 assume those unexpired leases and executory contracts specified in Section VI.C. below to be
21 rejected.

22 **B. Cure Payments.**

23 The Bankruptcy Court shall resolve any and all disputes regarding: (i) the amount of any
24 cure payment to be made in connection with the assumption of any contract or lease; (ii) the ability
25 of the City to provide “adequate assurance of future performance” within the meaning of Bankruptcy
26 Code section 365 under the contract or lease to be assumed; and (iii) any other matter pertaining to
27 such assumption and assignment. Any party to an executory contract or unexpired lease that is to be
28 assumed, or assumed and assigned, by the City that asserts that any payment or other performance is

1 due as a condition to the proposed assumption shall file with the Bankruptcy Court and serve upon
2 the City a written statement and accompanying declaration in support thereof, specifying the basis
3 for its Claim on the date that objections to confirmation of this Plan are due, September 2, 2016.
4 The failure to timely file and serve such a statement in accordance with this Plan shall be deemed to
5 be a waiver of any and all objections to the proposed assumption and of any claim for cure amounts
6 of the agreement at issue.

7 **C. Rejection of Executory Contracts and Unexpired Leases.**

8 Upon the Effective Date, without the need to file any motions, the following leases and
9 contracts are rejected: (a) the contracts and leases listed in the “List of Rejected Executory Contracts
10 and Unexpired Leases,” (b) any other contracts and leases expressly provided for under the terms of
11 this Plan as rejected, (c) and all other contracts and leases not assumed pursuant to Section VI.A. of
12 this Plan. For the avoidance of doubt, none of the following contracts and leases are rejected:

13 (a) those contracts and leases related to the 1996 Refunding Bonds Agreements (City Hall), the 1999
14 Refunding Certificates of Participation Agreements (Police Station/201 North E Street/South Valle)
15 and the 1998 Refunding Certificates of Participation Agreements (Sewer) (the assumption of which
16 are addressed in Classes 1, 2 and 7 of this Plan); (b) the contracts and leases of the City’s Water
17 Department; and (c) the SBCPF Settlement Agreement.

18 The City shall be entitled to modify or supplement the List of Rejected Executory Contracts
19 and Unexpired Leases any time up to 7 days prior to the Confirmation Hearing.

20 **D. Claims Arising From Rejection.**

21 Proofs of claim arising from the rejection of executory contracts or unexpired leases must be
22 filed with the Bankruptcy Court and served on the City no later than 30 days after the Effective Date.
23 Any Claim for rejection damages for which a proof of claim is not filed and served within such time
24 will be forever barred and shall not be enforceable against the City or its assets, properties, or
25 interests in property. All rejection damage claims will be treated as a Claim in Class 13 (General
26 Unsecured Claims).

1 **E. Modifications to Assumption, Assignment or**
2 **Rejection of Executory Contracts and Unexpired Leases.**

3 Any time within 180 days after the Effective Date, the City may file a motion to add or
4 remove contracts or leases to or from the List of Assumed and Assigned Executory Contracts and
5 Unexpired Leases and the List of Rejected Executory Contracts and Unexpired Leases or otherwise
6 modify any decision to assume, assign or reject any executory contract or unexpired lease, upon
7 notice to the counterparty. The Bankruptcy Court may grant such motion for cause shown, including
8 that no opposition to the motion was filed.

8 **VII. EXECUTION AND IMPLEMENTATION OF THE PLAN**

9 **A. In General.**

10 On or as soon as reasonably possible after the Effective Date, the City will execute all Plan
11 Documents requiring execution, deliver same to the counterparties to such Plan Documents and
12 perform thereunder.

13 On and after the Effective Date, the City will continue to operate pursuant to the Charter, the
14 California Constitution, and other applicable laws.

15 On and after the Effective Date, the City will take all actions required under the ADR
16 Procedures, *provided, however*, that the settlement of any Claims pursuant to the ADR Procedures
17 will be subject to the required consents, if any, of any applicable insurance carrier.

18 **B. Means for Implementation of the Plan.**

19 The implementation of the Plan will be accomplished by the City:

- 20 • implementing its settlements with CalPERS, the Retiree Committee, the SBCPF, the
21 Consenting Unions and the POB Creditors;
- 22 • performing its Plan obligations to the other Creditors whose Claims are Impaired or
23 Unimpaired under the Plan;
- 24 • complying with the contracts and memoranda of understanding that the City is
25 entering in connection with the City's annexation into the County Fire District and
26 the City's contracting out of certain municipal services including to Burrtec; and
- 27 • performing its obligations in good faith under the ADR Procedures to facilitate
28 settlement of disputed claims.

1 Certain of the critical elements of Plan implementation are discussed in items 1-4 below, and further
2 discussion is contained in the Disclosure Statement.

3 **1. Alternative Methods of Delivering Municipal Services**

4 A keystone of the Plan is contracting out and/or regionalization of certain municipal services
5 currently provided by City employees. Municipalities have been contracting for virtually all
6 municipal services since the 1950s. For a City such as San Bernardino, this approach can generate
7 economies of scale savings and labor cost savings. Services can be provided by either private sector
8 service providers or other public agencies, either through a contract or by regionalization.

9 The City has implemented annexation of the City into the County Fire District, and the
10 County Fire District is providing Fire Services directly to the City's residents. The City also entered
11 into a contract for solid waste disposal, recycling, sweeping and right-of-way clean-up services with
12 Burrtec in January 2016.

13 In addition, the other services the City will be considering contracting out include fleet
14 maintenance, business licensing, engineering, inspections, information technology, graffiti
15 abatement, traffic signal maintenance, street maintenance, custodial maintenance, code enforcement
16 and more. Such regionalization or outsourcing will allow the City to achieve both significant
17 savings and receive additional revenues. While the City has done relatively little contracting in the
18 past, it has had success with contracting out park maintenance functions in the last several years.
19 The City believes that utilizing alternative methods to deliver municipal services will have
20 significant economic and other benefits to the City and its residents.

21 **a. City's Joint Application With the County of**
22 **San Bernardino to Annex the City into the**
23 **San Bernardino County Fire Protection District**

24 In April 2015, the City issued a request for proposals to provide Fire Services to the City.
25 The City received two proposals in response – one from the County Fire District for annexation and
26 one from Centerra Group, LLC for private contracting of Fire Services. The City also received a
27 proposal from the Interim Fire Chief for reorganization of the existing Fire Department. The City
28 hired a consulting firm, Citygate Associates LLC ("Citygate"), to evaluate the proposals and make
recommendations.

1 In August 2015, Citygate completed its evaluation and issued its report entitled “Evaluation
2 of Fire Service Proposals” (“Citygate Evaluation”). On August 24, 2015, the former City Manager,
3 Allen Parker, with the assistance of Andrew Belknap of Management Partners and Citygate,
4 presented their evaluation and recommendations at a regularly noticed meeting of the City’s
5 Common Council. Both the Citygate Evaluation and the memorandum dated August 24, 2015 to the
6 Mayor and Common Council from Mr. Parker and Mr. Belknap regarding Annexing to San
7 Bernardino County Fire Protection District for Fire Service Delivery (“Staff Report”) recommended
8 that the City move forward with the County Fire District proposal. After hearing and considering
9 the presentations and public comments made at a five hour August 24, 2015 meeting, the Common
10 Council approved Resolution No. 2015-195 which authorized: (1) City staff to negotiate with San
11 Bernardino County and the County Fire District the terms and conditions of annexation and return to
12 the Common Council for approval; and (2) the City Manager to negotiate an interim contract for the
13 County Fire District to deliver Fire Services to the City until the annexation is completed and return
14 to the Common Council for approval. Ultimately, the City and County Fire District decided not to
15 enter into an interim contract, and proceed only with annexation of the City into the County Fire
16 District.

17 The County Fire District is a proven and professional provider of the full range of fire and
18 emergency medical services. The County Fire District currently operates 56 fire stations, serving
19 unincorporated San Bernardino County and 7 incorporated cities (including the City of Fontana). It
20 has a total of approximately 865 employees of which 642 are sworn firefighters. By annexation of
21 the City into the County Fire District, the City will be able to take advantage of two existing County
22 Fire District stations to serve portions of the City and pool costs for a large number of
23 administrative, support and specialized services such as management, dispatch, purchasing, fire
24 prevention, EMS management, hazardous materials response, search and rescue and wildland fire
25 response.

26 In accordance with Resolution No. 2015-195 and in furtherance of the City’s Plan, the City
27 submitted its certified application to the Local Agency Formation Commission of the County of San
28 Bernardino (“LAFCO”), a local commission (separate and independent of the County of San

1 Bernardino's government) empowered under the Cortese-Knox-Hertzberg Local Government
2 Reorganization Act of 2000 to ensure an orderly and efficient growth pattern and use of land
3 resources and protect against overlapping governmental jurisdiction within San Bernardino County.

4 In September 2015, the San Bernardino County Board of Supervisors, acting as the
5 governing body for the County Fire District, adopted a substantially similar resolution to the City's
6 making the annexation application a joint request from the City and County Fire District. LAFCO
7 subsequently opened two proposals for governmental reorganization, LAFCO 3198 – reorganization
8 to include annexation into the County Fire District, its Valley Service Zone and Service Zone FP-5;
9 and LAFCO 3197 – sphere of influence amendments (expansion) for the County Fire District. After
10 LAFCO opened the two proposals, the City, as well as several County agencies (Assessor, Registrar
11 of Voters and Surveyor) provided information necessary to support the reorganization proposal and
12 the sphere amendment.

13 In October 2015, LAFCO held the Departmental Review Committee Meeting to review both
14 proposals. Based on the meeting LAFCO issued a determinations letter on October 21 for both
15 LAFCO 3197 and LAFCO 3198. In response to the determinations letter, the County Fire District
16 filed a revised Plan of Service and Five Year Financial Forecast on October 28, 2015. The Five
17 Year Financial Forecast showed a City General Fund property tax transfer revenue requirement
18 starting at \$20.4 million in FY 2016/17, increasing to \$22.9 million in FY 2020/21. From an
19 economic standpoint, this result is quite favorable to the City when measured against the financial
20 projection prepared for the City by Urban Futures as part of the annexation analysis, which showed
21 City costs for a stand-alone fire department would have a General Fund revenue requirement of from
22 \$32.9 million to \$36.7 million over the same five year period.

23 Under the County Fire District's Plan of Service, City residents will experience improved
24 service from a dispatch system which has faster call processing time than is associated with the City
25 dispatch system, as well as from direct responses from two County Fire stations which are closer to
26 some sections of the City than City responding stations. County Fire also has more equipment for
27 delivery of fire services such as water tenders, water rescue boats, heavy equipment for floods or
28 earth moving, hand crews, ambulance response (in seven areas), additional hazardous materials

1 response capabilities, and sophisticated urban search and rescue capabilities. Regionalization of fire
2 services is considered an industry best practice in order to make service delivery more seamless and
3 to take advantage of economies of scale. Many cities are currently served using an annexation
4 model, and LAFCO has approved of several annexations into the County Fire District.

5 In January 2016, LAFCO held a public hearing to discuss LAFCO's staff recommendation to
6 accept the joint City/County annexation application. The application, including County Fire's
7 proposed service plan, was approved unanimously on January 27, 2016 as set forth in LAFCO
8 Resolution No. 3211. In February 2016, the 30 day reconsideration period of LAFCO's decision
9 ended and the Notice of Protest Hearing was issued. On April 21, 2016, LAFCO held the Protest
10 Hearing and the number of protests received was below 5% for both property owners and registered
11 voters. Accordingly, the LAFCO Executive Director determined that annexation of the City into the
12 County Fire District can proceed.

13 Annexation of the City into the County Fire District was implemented on July 1, 2016.
14 Completing the annexation in time for a July 1, 2016 effective date was crucial to the City's
15 reorganization efforts. The transition process for current City employees is underway. It is the
16 City's intention that disruptions to employment, compensation and benefits be kept to a minimum in
17 connection with the County Fire District taking over the provision of Fire Services. Nonetheless, the
18 City estimates that annual economic benefits from annexation will be between approximately
19 \$7.4 million and \$12 million. The City's Financial Model shows that even including certain one-
20 time transition costs associated with the annexation, the transfer of service responsibility will
21 improve the City's fiscal position by in excess of \$30 million, and considerably more if deferred
22 maintenance costs are taken into consideration. Without annexation the projections show that the
23 City would soon run an annual deficit of up to \$12 million per year. Therefore, successful
24 annexation is fundamental to restoring the City to solvency.

25 Under annexation, the City will remain responsible for certain "legacy" pension costs. These
26 legacy pension costs are accounted for in the Financial Model under the line item entitled "Fire's
27 Legacy CalPERS Pension Cost," and are estimated at approximately \$3.3 million in fiscal year
28 2016-17 with annual increases up to \$10 million annually in fiscal year 2033-34 for a total of

1 approximately \$131 million over the term of the Financial Model. The decision to annex into the
2 County Fire District does not have an impact on these costs because they relate to and must be paid
3 for the period when the City operated its own Fire Department. Even taking into consideration these
4 estimated legacy pension costs, the City firmly believes that the increased savings and revenue
5 improvements to the City from annexation on a net basis (particularly in contrast to the cost to the
6 City of continuing to fund a stand-alone fire department) will be of significant benefit to the City and
7 its residents and are critical to the success of the City's Plan.

8 **b. Burrtec Contract for Solid Waste Disposal and Related Services**

9 California cities are increasingly contracting with the private sector for solid waste and
10 recycling. Today the vast majority of cities in Southern California provide solid waste and recycling
11 services under a franchise agreement with one or more private companies. The move to private
12 contractors is justified by the economies of scale available to private companies which serve
13 numerous jurisdictions. These economies are found in several areas including capital acquisition,
14 fleet maintenance, workers compensation, employee recruitment, safety and training programs,
15 customer service / billing, technology and management. Recent examples include Hemet which
16 contracted its solid waste service to CR&R Waste and Recycling Services in 2011, and Newport
17 Beach which contracted its residential solid waste services (commercial had already been contracted)
18 to CR&R in 2013. Most cities in the Inland Empire provide these services through contracting with
19 private companies.

20 With California recycling requirements that have been in place for over 25 years, refuse
21 haulers gradually have expanded their businesses to include materials sorting, recycling, public
22 education, and in some cases, street sweeping and other related services, working in partnership with
23 individual cities and counties. In addition, the more sophisticated companies use specialized routing
24 systems to reduce travel times and produce and closely monitor work measurements based on their
25 experience. Given the expertise developed in multiple jurisdictions by these waste companies, and
26 the economies of scale that larger operations can provide, it is likely that contracting these services
27 to a private company will result in lower or similar costs to provide the service, plus increased
28

1 franchise fees paid to the City's General Fund by the contractor, along with fees paid by the
2 contractor to the City for an exclusive agreement.

3 In June 2015, the City sent out a request for proposals to contract three of its largest
4 maintenance services – solid waste and recycling, street sweeping and right-of-way cleanup. These
5 services are currently performed by approximately 100 employees in the City's Public Works
6 Department. Four companies submitted proposals, all of which are active in solid waste collection
7 and street sweeping in the Southern California area. An evaluation team of consultants with
8 experience in contracting and solid waste evaluated the companies' financial statements, reviewed
9 the technical, financial proposals and references, and provided a recommendation to the City
10 Manager. In November 2015, a recommendation was made to the Common Council, the Common
11 Council selected Burrtec and then directed staff to negotiate a ten-year agreement. In January 2016,
12 the negotiations with Burrtec were completed and the Common Council has approved the contract
13 between the City and Burrtec as Resolution No. 2016-10, a copy which is included as Exhibit 29 in
14 the Appendix. A copy of the Burrtec Contract is included as Exhibit 30 in the Appendix. As a
15 result, the City will be able to offer the same or better level of services than the City currently
16 provides with substantial economic benefit to the City.

17 In connection with the Burrtec Contract, the City has received or expects to receive these
18 benefits: (1) a one-time franchise fee payment of \$5 million within 60 days of execution of an
19 agreement; (2) franchise fees of \$2.8 million per year above current levels which the City estimates
20 will net a cumulative annual revenue stream of approximately \$5 million to \$7.6 million per year
21 over the 20-year term of the Financial Model as reflected in line item "New Waste Management
22 Franchise" (which amounts to approximately \$106.9 million in revenues); and (3) net revenue from
23 the sale of refuse vehicles, carts, bins, and containers of \$9,454,000 after vehicle leases are paid (the
24 City estimates gross sale values of \$12.225 million, which less of remaining lease payments, will net
25 the City approximately \$9.45 million of this amount – an estimate that is included in the Financial
26 Model under the line item, "Proceeds from IW Vehicle Sale & CIP"). In addition, Burrtec has
27 agreed to reimburse the City for "wear and tear" costs on the City's streets over the course of the
28

1 Financial Model (which costs are currently reflected in the line item “Proceeds from IW Vehicle
2 Sale & CIP”).

3 **c. Fleet Maintenance**

4 The City has been financially unable to replace its vehicles and equipment in accordance
5 with industry standards or provide an effective fleet maintenance operation. About 479 units,
6 representing 56% of the City’s total fleet, are currently due or past due for replacement at an
7 estimated cost of more than \$41 million. The aging fleet has resulted in a significant burden on the
8 understaffed fleet maintenance employees who must contend with an aging fleet and an inefficient
9 fleet operation. Deferred fleet maintenance also puts the City at risk for compliance with state
10 mandated equipment and vehicle inspections. The City is attempting to address this issue through
11 the transfers of certain heavy equipment to Burrtec as part of its outsourcing efforts, and through
12 resources directed via the Police Resources Plan (in the form of new fleet vehicles, which the City
13 intends will alleviate some of the maintenance issues currently faced). The City also anticipates
14 outsourcing fleet maintenance operations in 2016 to provide the City with increased resources and
15 estimated annual savings of \$400,000 beginning in fiscal year 2016-17 and increasing thereafter to
16 about \$600,000 as shown in the line item “Contract Fleet Maintenance” in the Financial Model.

17 **d. Other Contracting Options**

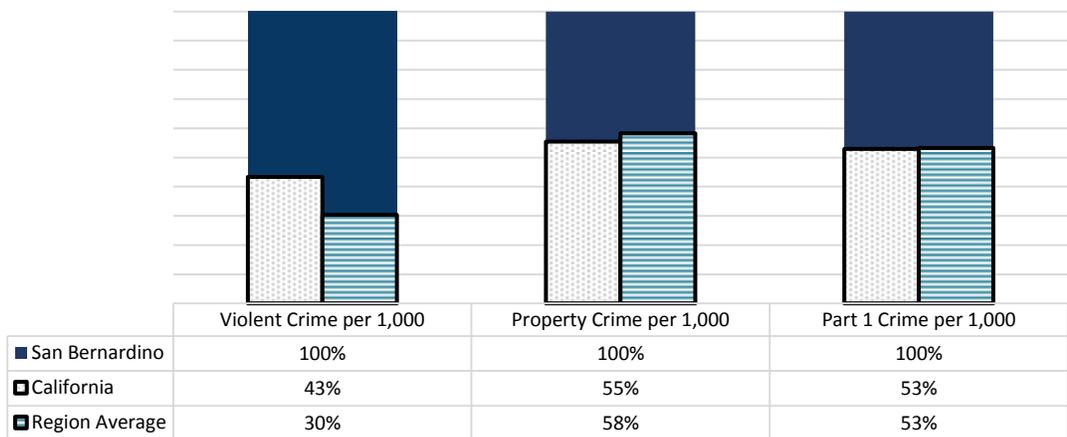
18 There are other areas where the City likely will derive efficiencies from a contract approach.
19 Efforts are underway to contract for business license administration, custodial services, graffiti
20 abatement and some information technology functions which are anticipated to be completed in
21 2016 and 2017. Areas where savings have yet to be identified but might offer benefit include
22 engineering, inspection, code enforcement and attorney services, and the City is preparing RFPs and
23 implementing an analysis of each option.

24 **2. Police Resources Plan**

25 The primary municipal service provided by the City is for police services. Reducing the
26 City’s violent and other crime rates and addressing the City’s perception as a “dangerous” city are
27 the most pressing issues facing the City. As shown in the chart below, San Bernardino has more
28

1 than double the violent crime rate as either the surrounding region or the state as a whole. For every
2 three violent crimes per 1,000 residents in the region, there are ten such crimes in San Bernardino.

3 *State and Regional Crime Rates Compared to San Bernardino in 2014*



4
5
6
7
8
9
10
11 Sources: 2015 California Department of Finance; 2014 Federal Bureau of Investigation Crime Reports

12 Notes: Region average includes large nearby cities: Fontana, Moreno Valley, Rancho Cucamonga, Ontario, Riverside, and Corona.
13 Part 1 crimes include violent and property crimes as defined by the Federal Bureau of Investigation.

14 San Bernardino's crime rates are high even when compared to other high-crime cities in
15 California. Of the 63 California cities with populations between 100,000 and 400,000, San
16 Bernardino has the second highest Part 1 crime rate. The table below provides demographic and
17 crime data for the 10 cities with the highest crime rates within this population range. Notably, San
18 Bernardino also has a significantly lower median household income and a higher percentage of
19 people in poverty than other cities with high rates of crime. People living in poverty are the victims
20 of violent crime at more than twice the rate of high income populations according to a study by the
21 Bureau of Justice Statistics between 2008 and 2014.

High-Crime Cities in California between 100,000 and 400,000 in population – Demographic Data

3. City	2015 Population	2014 Part 1 Crimes per 1,000 Residents *	2014 Violent Crimes per 1,000 Residents	2014 Percent Violent Crime of Part 1 Crimes	2013 Median Household Income	2013 Percent of All People in Poverty
Antioch	108,298	46.9	7.8	17%	\$65,254	14.9
Bakersfield	369,505	45.0	4.5	10%	\$56,204	20.4
Berkeley	118,780	46.7	3.6	8%	\$63,312	18.7
Concord	126,069	45.0	3.7	8%	\$65,798	12.1
Modesto	209,186	52.3	8.5	16%	\$47,060	20.8
Richmond	107,346	48.0	7.9	16%	\$54,589	18.5
San Bernardino	213,933	53.7	9.9	19%	\$38,385	32.4
Stockton	306,999	56.1	13.0	23%	\$46,831	24.3
Vallejo	119,683	49.8	8.6	17%	\$58,371	17.5
Victorville	121,168	41.6	5.3	13%	\$50,034	25.3
State	38,714,725	28.4*	4.0	14%	\$61,094	15.9

Sources: 2015 California Department of Finance; 2014 Federal Bureau of Investigation Crime Reports; 2009-2013 American Community Survey Estimates

Note: Part 1 crimes include violent and property crimes as defined by the Federal Bureau of Investigation.

San Bernardino’s rates of crime also top national averages. San Bernardino has 53.7 Part 1 crimes per 1,000 residents and 9.9 violent crimes per 1,000 residents, significantly higher than the respective national rates of 29.6 and 3.7, according to the 2014 Crime Reports by the Federal Bureau of Investigation.

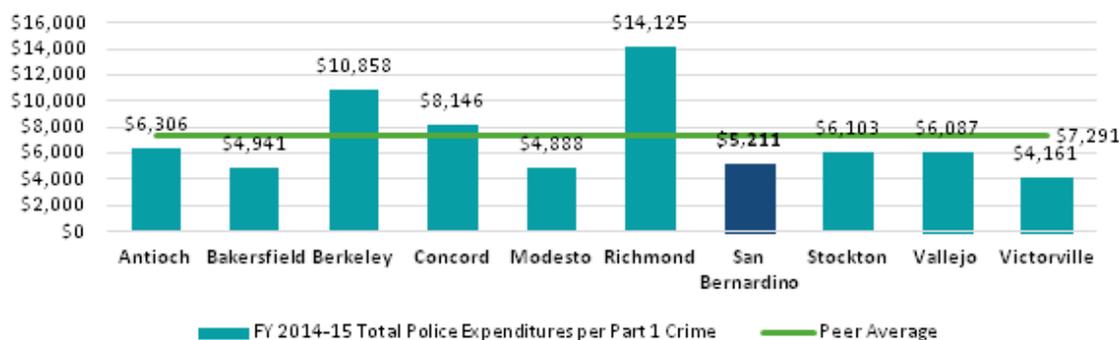
Yet, financial circumstances have forced the City to reduce the size of its Police Department. The Police Department’s sworn staffing levels have been in decline steadily since 2009, while crime rates remain steady and response times rose to unacceptable levels. The general service impacts can be described as follows:

- Sworn staffing has been reduced from 356 full-time equivalent (FTE) employees in 2008 to 248 today (30% reduction),

- Patrol division sworn staffing has been reduced by 25% since 2008,
- Community policing teams have been scaled back by about 75%,
- Narcotics enforcement has been reduced by 50% since 2008,
- Traffic enforcement personnel were reduced by 58% since 2008,
- Priority 1 average response times increased 76% since 2008, and
- Almost 36% of patrol vehicles are overdue for replacement.

Unless residents, business owners and visitors feel safe in the City, efforts to attract economic development and new residents will be significantly hampered. Currently, funding for the Police Department falls well below the average compared with other similarly sized California cities with high rates of crime.

Similar Sized California Cities with Top Crime Rates – Police Expenditure per Part 1 Crime in FY 2014-15



Sources: FY 2014-15 Adopted City Budgets; 2014 Federal Bureau of Investigation Crime Reports

Note: Part 1 crimes include violent and property crimes as defined by the Federal Bureau of Investigation.

The City will have to dedicate significant resources to very specific and measurable elements to reduce crime.

To address these issues, the City developed a five-year plan intended to bolster the City’s police resources and reduce the City’s crime rates (the “Police Resources Plan”) which was approved by the Common Council in November 2015. A staff report outlining the Police Resources Plan is included in the Appendix as Exhibit 11. The primary objective of the Police Resources Plan is to rebuild sworn staffing levels and provide the sworn staff with the tools (largely technology, equipment and vehicles) needed to do the job as follows:

- 1 • Increase staffing levels of the City’s Police Department to enable the Police
- 2 Department to reduce call response time sand be able to build deeper relationships in the
- 3 community;
- 4 • Invest in the Police Department technology (to replace otherwise aging and deficient
- 5 systems, to improve efficiency and effectiveness and to ensure business continuity and access to
- 6 critical systems); and
- 7 • Fleet replacement (to replace the Police Department’s largely aging fleet - with more
- 8 than half of all police cars 10 years or older and roughly a fifth with more than 100,000 miles).
- 9 The Police Resources Plan also seeks to increase community engagement in strategies to reduce
- 10 crime and increase economic development opportunities.

11 With respect to staffing, the table below provides a history of authorized sworn police
 12 staffing levels over the last 10 years. The City’s sworn police staffing was at its peak of 356
 13 positions in 2009. Since that time the number of sworn positions has decreased by almost 30%. Also,
 14 the number of actual positions (those filled) is at the lowest level in a decade.

15
 16 *History of Sworn Police Staffing Levels*

17 4. <u>Fiscal Year</u>	Budgeted	Year-End Actual
18 FY 2005-06	312	311
19 FY 2006-07	330	323
20 FY 2007-08	346	346
21 FY 2008-09	356	324
22 FY 2009-10	350	326
23 FY 2010-11	350	348
24 FY 2011-12	305	292
25 FY 2012-13	281	272
26 FY 2013-14	260	234
27 FY 2014-15	248	229
28 FY 2015-16	248	214 (November)
Percent Change FY 2011 to 16	-29%	-39%

Source: San Bernardino Police Department

1 Ideally, the Police Resources Plan will result in 89 new positions, for an overall 29% increase in
2 sworn positions. Although still below the peak staffing level of 356 in fiscal year 2009, this increase
3 will enable the department to deliver its core service mission, reduce call response times, and
4 provide the depth required to engage with the community on a path to improving the overall quality
5 of life. Increased staffing would also have a significant impact on the ability of the department to
6 redeploy officers and other staff to address those critical community issues related to gangs, illegal
7 narcotics, prostitution, and traffic enforcement. Increasing both sworn and civilian staffing levels
8 will provide renewed capacity to the department to be able to reconstitute or expand some of the
9 specialty units designed to address these issues and reduce associated crime.

10 The City will only be able to fund a fraction of the Police Resources Plan with existing
11 revenues. To address the staffing and technology goals identified above, the City will spend
12 approximately \$17.6 million over the next five year period, with a total expenditure of \$91 million
13 over the 20 year term of the Financial Model as reflected in the “Police Services Master Plan” line
14 item. Over the horizon of the Financial Model, the City projects it can afford only about 40% of
15 what is necessary to fund the Police Resources Plan.

16 With respect to police fleet vehicles, more than half of the City’s Police Department vehicles
17 require replacement, as reflected in the List of City Non-Fire Vehicles included in the Appendix as
18 Exhibit 15. The City’s Financial Model allocates approximately \$23.4 million over the 20 year term
19 for new police vehicles as reflected in the Capital Investment-Fleet-Police line item to address the
20 third goal of Police Resources Plan.

21 The Police Resources Plan addresses some of the most critical needs for the Police
22 Department in its fight against rising crime rates. While the cost to the City of implementing the
23 Police Resources Plan is not insignificant, research has shown that reductions in crime rates can lead
24 to higher tax revenues and increased economic development. Thus, the City’s plan to upgrade the
25 Police Department’s infrastructure (staffing, IT and fleet) will have long term economic benefits for
26 the City.

1 **3. Necessary Reinvestment in City Infrastructure**

2 **a. Street and Road Repair Proposal**

3 As set forth on the Street Repairs Report included in the Appendix as Exhibit 9, the City’s
4 right-of-way capital maintenance backlog exceeds \$180 million. To fund the much needed right-of-
5 way maintenance needs, the City of San Bernardino will utilize both restricted funding sources
6 (Measure I and State Gas Tax Funds) as well as General Fund resources. The City’s Financial Model
7 allocates only about \$7.1 million over 20-years to address a current need exceeding \$180 million.
8 Even though the addition of General Fund monies increases the funding available over the next 20-
9 years, the City will still be able to fund only a small fraction of the current need (as reflected at line
10 “Capital Investment – Public Right-of-Way” of the Financial Model and in the Street Repairs Plan.
11 While not sufficient to fully address all of the City’s street repair and maintenance needs, the
12 additional application of General Funds is at least anticipated to reduce the numbers of streets within
13 the City that will require rehabilitation and/or full reconstruction. Because the City’s costs for
14 backlogged capital maintenance will continue to grow over the 20-year funding term, the funding
15 percentage is anticipated to decline annually as costs for repairs go up. As a result, the City will
16 need to find additional sources for funding in the coming years.

17 San Bernardino Associated Governments (“SANBAG”) is the council of governments and
18 transportation planning agency for San Bernardino County. Among other things, SANBAG
19 administers Measure I, the half-cent transportation sales tax approved by county voters in
20 1989. Pursuant to a letter agreement dated January 14, 2016, by and between the City and SANBAG
21 (the “SANBAG Agreement”): (a) SANBAG is authorized to withhold, and has been withholding,
22 certain Measure I funds until the City is in compliance with its obligations under Measure I and its
23 requirements; and (b) such authorized withholding is without the need to seek relief under the
24 Bankruptcy Code, among other things. The Plan and the confirmation of the Plan shall not affect,
25 impair or modify, in any way, SANBAG’s rights under the SANBAG Agreement, including the
26 power to continue to withhold funds until the City is in compliance with its obligations under
27 Measure I and its requirements, and the Confirmation Order shall so expressly provide.
28

1 people on average occupy City Hall. The City Hall building is a 7-story structure with one
2 subterranean level reinforced concrete structure designed in 1970. It is constructed with lightweight
3 concrete slabs, beams and columns and to the 1968 UBC building code. However, the 1971 San
4 Fernando earthquake demonstrated vulnerability of this type of construction to collapse. Starting
5 with the 1973 Building Code, this type of construction was prohibited in areas with high and
6 moderate seismic potential.

7 In 2002, IDS performed work on the seismic strengthening project of the City Hall parking
8 structure. While performing this work, IDS reported to the City that the building had sustained
9 structural damage which had occurred during the Landers earthquake of 2002. Subsequently, the
10 City solicited proposals from earthquake engineering consultants to perform a seismic evaluation of
11 the building, but due to funding constraints, the City did not proceed at that time with the
12 evaluations. In 2007, URS Corporation was retained by the City to perform a seismic evaluation of
13 City Hall. Based on the review and soil testing under City Hall, URS' review confirmed that the
14 building needed seismic retrofitting.

15 In July 2015, the City developed and sent out a Request for Qualifications (RFQ) to
16 architects and large contractors who have successfully completed large-scale seismic retrofits for
17 municipalities, universities and other public entities while maintaining the design integrity of their
18 buildings. The City received statements of qualifications and project estimates from five firms.
19 Following a review of the proposals received, the IDS Group was selected to perform the work. The
20 work requested consists of performing a detailed analysis to pinpoint the problem areas and to
21 recommend a retrofit strategy for City Hall, identify additional professional assistance that will be
22 required for implementation, and estimate associated construction costs and schedule. The options
23 for continuity of City operations during the retrofitting process will also be considered because the
24 seismic retrofit will require all of the employees as well as the furnishings, equipment and
25 infrastructure necessary for those employees to perform their job duties to move to another building
26 during the work required to complete the retrofit.

27 IDS Group's work was recently completed and the City Hall seismic retrofit is projected to
28 cost \$20 million. The Financial Model assumes a \$20 million financing for the seismic retrofit costs,

1 equal to an annual debt service of \$1.7 million, and these costs are included in the Financial Model
2 in the Capital Investment – Buildings & Fixtures line item.

3 **4. City Charter Reform**

4 The City historically has experienced a wide range of operational and other problems that
5 have adverse economic impacts due to the existing Charter structure. As one example, the Charter
6 specifies that both primary and general elections for City officers are to be held at times other than
7 the nominal November general election in numbered years. As a result, the City cannot consolidate
8 its elections with most State and Federal elections. This costs the City at least \$270,000 more per
9 election cycle because costs cannot be shared. It also diminishes voter turnout.

10 The Mayor and Common Council established the Volunteer Citizen-Based Charter
11 Committee (“Charter Committee”) in March 2014. The Charter Committee identified the Charter as
12 a barrier to efficient and effective government because it is overly complex, hard to understand, and
13 contains elements that are inconsistent with best practices for modern municipal government. The
14 Charter Committee worked to develop recommendations for a new or substantially revised charter
15 that reflects the principles of good governance and meets the City’s needs. The Charter Committee
16 has met approximately twice per month since May 2015 with the goal of providing
17 recommendations to the Mayor and Common Council by May 2016, and has sought public input and
18 engaged in community outreach efforts through public forums.

19 On December 29, 2015 the Charter Committee completed its work on the charter skeleton.
20 The charter skeleton is an outline of the key elements, ideas and principles to be addressed in the
21 City’s charter, including an overall governance structure. In order to recommend a charter that
22 reflects best practices consistent with modern municipal governance, the Charter Committee decided
23 to propose a completely new charter instead of recommending numerous amendments to the existing
24 charter. The City intends to place a proposed new charter before the City’s voters on the November
25 2016 ballot.

26 The Charter Committee’s preliminary recommendations for the charter result in a governance
27 structure that looks fundamentally different than the existing governance structure. It shows an
28 organizational structure with greater clarity in roles, responsibilities and reporting relationships.

1 Perhaps most importantly, the City Manager is unambiguously responsible for City operations and
2 management. It removes administrative and management decisions from the Mayor and Common
3 Council and focuses their role on establishing policies to be carried out by the City Manager and
4 executive leadership.

5 This structure is consistent with best practices for council-manager forms of government, as
6 well as the provisions of modern-era charters. Assuming this charter approach is placed on the ballot
7 by the Mayor and Common Council and approved by the voters, the City will have a governance and
8 management structure which much more closely approximates the structure in other comparable
9 California cities. This is of critical importance to the City and its residents because the governance
10 approach taken by other cities leads to performance which is demonstrably better in terms of the
11 delivery of municipal services and the maintenance of fiscal solvency than has been the case for the
12 City under the current system of government. While awaiting Charter reform, the City is operating
13 under the Operating Practices for Good Government protocol the City adopted which streamlines
14 decision making, increases efficiency and provides for better accountability. The City expects that
15 Charter reform will result in streamlined operations, increased efficiency and improved City
16 government accountability. The City's Plan is not conditioned upon approval of any Charter
17 reforms, and the City's Financial Model and feasibility analysis do not assume or require that any
18 Charter reforms will be implemented.

19 **5. Revenue Enhancement Measures**

20 While revenue enhancement is severely constrained under California law, there are a number
21 of best practices which can be implemented to generate revenues. The City has evaluated
22 approximately 14 additional revenue sources (many of which require voter approval) and the
23 Financial Model contemplates implementation of various new fee adjustments. In 2015, the City
24 implemented increases to the cost allocation structure for the water, sewer treatment and sewer
25 collection enterprise funds. The City's fire service annexation application requested annexation into
26 a service zone with an approximate \$148 per parcel annual fee, which would generate new revenue
27 of approximately \$7.8 million for Fire Services. The City also negotiated a solid waste management
28 franchise fee.

1 Many measures the City considered for purposes of raising revenues have been rejected
2 because they would not be realistically feasible to implement. In light of the very low income levels
3 among a substantial percentage of the City's residents, the City faces significant hurdles in pursuing
4 voter approved tax measures. The City remains the poorest community of its size in California, and
5 it has grown progressively poorer over the past decades. According to the latest U.S. Census Bureau
6 data: the per capita income of City residents is \$14,879, compared to a state average of \$29,527; the
7 median household income in the City is \$38,385, compared to a state average of \$61,094; and the
8 percentage of City residents living below poverty level is 32.4%, compared to a state wide average
9 of 15.9%. The median value of owner occupied housing units in the City is \$152,800 compared to a
10 state average of \$366,400.

11 Compounding the severe poverty is the City's relatively low population growth rate. Over
12 the past 25 years, the City had a compound annual growth rate of 1%, and over the last five years the
13 compound annual growth rate was 0.25%. The City's inability to provide a basic level of municipal
14 services only exacerbates the slow growth rate. Until the City can restore a decent level of
15 municipal services to attract new residents, new population growth is expected to continue to be in
16 the poorer population sectors of the City where the demand for City services is even greater.

17 A summary of key potential revenue enhancement options the City considered is set forth
18 below.

19 **a. Measure Z Sales Tax Reauthorization**

20 The City is working towards reauthorization of the Measure Z sales tax in 2021, which
21 requires voter approval. The City projects that reauthorization of the Measure Z sales tax will lead
22 to estimated revenues of between \$8.7 million and \$12.8 million each year between fiscal year 2021
23 through fiscal year 2034 for a total of approximately \$134.7 million. Other than Measure Z, the City
24 considered but decided against further sales tax increases at this time. Sales tax in the City is already
25 among the highest in the region, and an increase would only unduly burden the City's residents who
26 are among the poorest in California. City officials reasonably determined that the residents are not
27 financially capable at this time of carrying a heavier sales tax load in addition to the other revenue
28 measures that will be implemented in connection with the Plan.

1 not financially feasible for the City at this time. In the interim, and as an alternative, the City is
2 instead focused on seeking to realize additional potential revenue with updated fee and charges
3 schedules implemented later in 2016, better collection on existing fees and charges, and resource
4 management, together with the parcel tax being implemented for fire and EMS services as part of
5 annexation into the County Fire District.

6 **C. Insurance.**

7 The City is self-insured for the first \$1 million of defense costs, settlements and judgments
8 per bodily injury or personal injury claim. If the amount of judgment or settlement exceeds
9 \$1 million, the City, as a member of the BICEP, and pursuant to the BICEP Agreement, has
10 purchased excess liability coverage that is backed by Reinsurance Policies between BICEP and each
11 of Great American Insurance Company, Wesco Insurance Company and Starr Indemnity & Liability
12 Co. (and/or other companies that BICEP contracts with for reinsurance). The aggregate effect of the
13 BICEP Agreement and the Reinsurance Policies is to provide annually up to \$9 million of coverage
14 per claim and an aggregate \$26 million dollars of coverage for personal liability and bodily injury
15 claims above the City's \$1 million self-insured retention per claim, subject to the other terms,
16 conditions and limitations of the BICEP Agreement and the Reinsurance Policies, copies of which
17 are attached to the Appendix as Exhibit 5.

18 Under the BICEP Agreement, (1) bodily injury means physical injury, emotional distress,
19 sickness, or disease sustained by a person, including death resulting from any of these at any time;
20 and (2) personal injury means damages caused by or arising out of one or more of the following:
21 (a) false arrest, detention or imprisonment, malicious prosecution or abuse of process; (b) wrongful
22 entry or eviction; (c) publication or utterance of material that slanders or libels a person or
23 organization or disparages a person's or organization's goods, products or services, or infringement
24 of copyright, title or slogan, or oral or written publication of material that violates a person's right of
25 privacy; (d) discrimination, other than employment practices, based upon race, religion, nationality,
26 national origin, color, creed, sex, sexual orientation, handicap, disability, age or employment or
27 violation of civil rights; and (e) assault and battery.

1 Under paragraphs 6.1 and 6.2 of Exhibit A to the BICEP Agreement, the City is obligated to
2 provide BICEP with written notice of any claim or occurrence that the BICEP Agreement covers or
3 potentially covers if, among other things, the claim involves paralysis, brain damage,
4 dismemberment or death or otherwise has potential damages exposure of at least \$500,000 (which
5 potential damages exposure includes claimant's attorney's fees, costs and prejudgment interest).
6 The City in the ordinary course provides notice to BICEP of such claims. Attached to the Disclosure
7 Statement as Exhibit 6A is a list of claims as to which the City has provided such notice to BICEP
8 (including claims that do not necessarily meet the criteria of Section 6.1 of Exhibit A to the BICEP
9 Agreement).

10 Under the Plan, if necessary to preserve its rights and the rights of claimants under the
11 BICEP Agreement, and solely to the extent that Section 365 of the Bankruptcy Code is applicable to
12 the BICEP Agreement, the City will assume the BICEP Agreement pursuant to Section 365. In that
13 event, the Confirmation Order shall contain findings regarding the approval of assumption and the
14 satisfaction of the cure and adequate assurance requirements of Section 365(b) of the Bankruptcy
15 Code.

16 Attached to the Appendix as Exhibit 4 are the ADR Procedures that shall be used to liquidate
17 the claims of claimants holding Litigation Claims as part of the claims allowance procedures. The
18 City designed the ADR Procedures to substantially reduce the cost to the City and the claimants of
19 reaching an equitable resolution of the claims. The City intends to make concrete mediation
20 settlement proposals once the Plan is confirmed and the ADR Procedures apply, and the City will
21 pay for the costs of the mediators that are used in the ADR Procedures. The ADR Procedures also
22 provide that, unless otherwise directed by the Bankruptcy Court, after the Effective Date of the Plan
23 the City shall have the discretion to enter into settlements regarding the allowance and payment of
24 Litigation Claims without further order of the Bankruptcy Court. The ADR Procedures also provide
25 that BICEP will be a released party in any settlement entered into by the City in respect of any
26 Litigation Claims.

27 ***In connection with solicitation of votes to approve the Plan, the City will provide a separate***
28 ***notice to the holders of Litigation Claims listed in Exhibit 6 to the Appendix that a discussion of***

1 *the Litigation Claims, the BICEP Agreement and the Reinsurance Policies is contained in Section*
2 *IV.A.9. of the Disclosure Statement, and that copies of the ADR Procedures, the BICEP*
3 *Agreement and the Reinsurance Policies are attached as Exhibits 4 and 5 to the Appendix. A*
4 *more extensive discussion of Litigation Claims and the BICEP Agreement is found in the*
5 *Disclosure Statement at Section IV.A.9.*

6 **D. Continued Operations**

7 Following the Effective Date, the City will continue to operate under its Charter (subject to
8 any changes, repeal or amendments pursuant to voter action), the California Constitution, and other
9 applicable laws. The City will continue to collect real property tax revenues, sales tax revenues, the
10 user utility tax, and other taxes, fees, and revenues following the Effective Date, spending such
11 revenues on municipal services. In accordance with existing policies and operational guidelines, the
12 City will continue to pay ordinary course debt, including, without limitation, Workers'
13 Compensation Claims (the Uninsured Portion, where the Insured Portion is covered by insurance),
14 trade and/or vendor claims, amounts due CalPERS and amounts due federal agencies (e.g., HUD,
15 and Environmental Protection Agency) that provide ongoing funding to the City. The City shall
16 indemnify the past and present officers and employees of the City with respect to claims against such
17 officers and employees that arose prior to the Confirmation Date in accordance with the City's pre-
18 petition practices and state law, and the City shall continue to provide such indemnification with
19 respect to claims against officers and employees that arise after the Confirmation Date.

20 **VIII. RETENTION OF THE CITY'S RIGHTS OF ACTION**

21 All of the City's Rights of Action shall be retained by the City after the Effective Date. The
22 failure to list in this Plan, Disclosure Statement, the Appendix or any Plan Document any potential
23 or existing Right of Action retained by the City is not intended to and shall not limit the rights of the
24 City to pursue any such Right of Action. Unless a Right of Action is expressly waived, relinquished,
25 released, compromised, or settled in this Plan or otherwise, the City expressly reserves all Rights of
26 Action for later adjudication, and as a result, no preclusion doctrine, including without limitation the
27 doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial,
28 equitable, or otherwise), or laches, shall apply to such Rights of Action upon confirmation or

1 consummation of this Plan or thereafter. Without limiting the foregoing, the City expressly reserves
2 the right to pursue against any Entity any claims alleged in any lawsuit in which the City is a
3 defendant or an interested party, and to enforce its rights with respect to the BICEP Agreement and
4 the Reinsurance Policies and to bring claims for damages for any breach thereof.

5 **IX. DISTRIBUTIONS**

6 **A. Distribution Agent.**

7 On and after the Effective Date, the City shall act as the Distribution Agent under this Plan.
8 The City may also retain one or more agents (including Rust Omni) to perform or assist it in
9 performing the distributions to be made pursuant to this Plan, which agents may serve without bond.
10 The City may provide reasonable compensation to any such agent(s) without further notice or
11 Bankruptcy Court approval.

12 **B. Delivery of Distributions.**

13 All distributions to any holder of an Allowed Claim shall be made at the address of such
14 holder as set forth in the books and records of the City or its agents, unless the City has been notified
15 by such holder in a writing that contains an address for such holder different from the address
16 reflected in the City's books and records that is mailed to Rust Consulting/Omni Bankruptcy, 5955
17 DeSoto Avenue, Suite 100, Woodland Hills, CA 91367 at least two weeks prior to such distribution.
18 All distributions to Indenture Trustees or similar Entities shall be made in accordance with the
19 relevant indenture or agreement, as applicable.

20 **C. Distributions of Cash.**

21 Any payment of Cash to be made by the City or its agent pursuant to this Plan shall be made
22 by check drawn on a domestic bank or by wire transfer, at the sole option of the City.

23 **D. Timeliness of Payments.**

24 Any payments or distributions to be made pursuant to this Plan shall be deemed to be timely
25 made if made within 30 days after the dates specified in this Plan. Whenever any distribution to be
26 made under this Plan shall be due on a day that is not a Business Day, such distribution instead shall
27 be made, without interest on such distribution, on the immediately succeeding Business Day, but
28 shall be deemed to have been timely made on the date due.

1 **E. Compliance with Tax, Withholding, and Reporting Requirements.**

2 The City shall comply with all tax, withholding, reporting, and like requirements imposed on
3 it by any government unit, and all distributions pursuant to this Plan shall be subject to such
4 withholding and reporting requirements. In connection with each distribution with respect to which
5 the filing of an information return (such as Internal Revenue Service Forms W-2, 1099, or 1042) or
6 withholding is required, the City shall file such information return with the Internal Revenue Service
7 and provide any required statements in connection therewith to the recipients of such distribution, or
8 effect any such withholding and deposit all moneys so withheld to the extent required by law. With
9 respect to any entity from whom a tax identification number, certified tax identification number, or
10 other tax information that is required by law to avoid withholding has not been received by the City,
11 the City at its sole option may withhold the amount required and distribute the balance to such entity
12 or decline to make such distribution until the information is received.

13 **F. Time Bar to Cash Payments.**

14 Checks issued by the City on account of Allowed Claims shall be null and void if not
15 negotiated within 91 days from and after the date of issuance thereof. Requests for reissuance of any
16 check shall be made directly to the City by the holder of the Allowed Claim with respect to which
17 such check originally was issued. Any claim in respect of such a voided check must be made on or
18 before the second anniversary of the Effective Date. After such date, all Claims in respect of voided
19 checks will be discharged and forever barred and the City will retain all moneys related thereto.

20 **G. No De Minimis Distributions.**

21 Notwithstanding any other provision of this Plan, no Cash payment of less than \$10 will be
22 made by the City on account of any Allowed Claim.

23 **H. Distributions of Unclaimed Property.**

24 If any distribution to any holder of a Claim is returned to the City or its agent as
25 undeliverable, no further distributions shall be made to such holder unless and until the City is
26 notified in writing of such holder's then-current address. Any unclaimed distributions shall be set
27 aside and maintained by the City. On the first business day after the first anniversary of the Effective
28 Date and after each subsequent anniversary until all Plan distributions are completed, the City shall

1 post on its official website a list of unclaimed distributions, together with a schedule that identifies
2 the name and last-known addresses of the holders of any unclaimed distributions. The City shall not
3 be required to make any further attempt to locate the holders of any unclaimed distributions. Any
4 distribution under this Plan that remains unclaimed after 120 days following the date of the first
5 posting on the website may be deemed by the City not to have been made and, together with any
6 accrued interest or dividends earned thereon, may, at the City's sole discretion, be transferred to and
7 vest in the City to be used by the City for any purpose. The City shall not be obligated to make any
8 further distributions on account of any Claim with respect to which an undeliverable distribution was
9 made or was to be made, and such Claim shall be treated as a Disallowed Claim. Nothing contained
10 herein shall affect the discharge of the Claim with respect to which such distribution was to be made,
11 and the holder of such Claim shall be forever barred from enforcing such Claim against the City or
12 its assets, estate, properties, or interests in property.

13 **I. No Distributions on Account of Disputed Claims.**

14 Notwithstanding anything to the contrary in this Plan, no distributions shall be made on
15 account of any part of any Disputed Claim until such Claim becomes Allowed (and then only to the
16 extent so Allowed). Distributions made after the Effective Date in respect of Claims that were not
17 Allowed as of the Effective Date (but which later became Allowed) shall be deemed to have been
18 made as of the Effective Date.

19 **J. Certain Claims to be Expunged.**

20 Any Claim that has been or is hereafter listed in the List of Creditors as contingent,
21 unliquidated or disputed, and for which no proof of Claim is or has been timely filed, is not
22 considered to be an Allowed Claim and shall be expunged without further action by the City and
23 without further notice to any party or any action, approval or order of the Bankruptcy Court.

24 **K. No Post-petition Accrual.**

25 Unless otherwise specifically provided in this Plan, in an executed Plan Document or
26 otherwise required by order of the Bankruptcy Court, the City will not be required to pay to any
27 holder of a Claim any interest, penalty, or late charge accrued or accruing with respect to such claim
28 from the Petition Date through the Confirmation Date.

1 **X. DISPUTED CLAIMS; OBJECTIONS TO CLAIMS; PROSECUTION OF**
2 **OBJECTIONS TO DISPUTED CLAIMS**

3 **A. Claims Objection; ADR Procedures; Prosecution of Objections.**

4 The City will have the right to object to the allowance of Claims with respect to which
5 liability or allowance is disputed in whole or in part and to subject any Disputed Claim to the ADR
6 Procedures. The City shall have until the later of (x) 180 days after the Effective Date or (y) 180
7 days after a Claim was filed or scheduled, to either: (a) file and serve objections to Claims, or (b)
8 give notice to the holder of a Disputed Claim that the City intends to try and resolve allowance of the
9 Claim pursuant to the ADR Procedures (the "180 Day Deadline"). Upon the request of the City, the
10 Bankruptcy Court shall be authorized to extend the 180 Day Deadline. The City anticipates there
11 will be additional Bar Dates for certain Claims classified under this Plan. The ADR Procedures are
12 attached to the Appendix as an Exhibit.

13 **B. Payments and Distributions with Respect to Disputed Claims.**

14 After the Effective Date has occurred, at such time as a Disputed Claim becomes an Allowed
15 Claim, in whole or in part, the City or its agent will distribute to the holder thereof the
16 distribution(s), if any, to which such holder is then entitled under this Plan. Such distribution(s), if
17 any, will be made as soon as practicable after the date that the order or judgment of the Bankruptcy
18 Court allowing such Disputed Claim becomes a Final Order (or such other date as the Claim
19 becomes an Allowed Claim). Unless otherwise specifically provided in this Plan, no interest will be
20 paid on Disputed Claims that later become Allowed Claims.

21 **XI. EFFECT OF CONFIRMATION**

22 **A. Discharge of the City.**

23 Upon the Effective Date, the City will be discharged from all Debts of the City and Claims
24 against the City as of the Confirmation Date, including without limitation all Pre-Confirmation Date
25 Claims, other than (i) any Debt specifically and expressly excepted from discharge by this Plan or
26 the Confirmation Order, or (ii) any Debt owed to an entity that, before the Confirmation Date, had
27 neither notice, including notice by publication, as applicable, nor actual knowledge of the
28 Bankruptcy Case. The rights afforded in this Plan and the treatment of all holders of Pre-

1 Confirmation Date Claims, whether such Claims are Impaired or Unimpaired under this Plan, will be
2 in exchange for and in complete satisfaction, discharge, and release of all Claims of any nature
3 whatsoever arising on or before the Confirmation Date, known or unknown, including any interest
4 accrued or expenses incurred thereon from and after the Petition Date, whether against the City or
5 any of its properties, assets, or interests in property. Except as otherwise provided herein, upon the
6 Effective Date, all Pre-Confirmation Date Claims will be and shall be deemed to be satisfied,
7 discharged, and released in full, be they Impaired or Unimpaired under this Plan.

8 Notwithstanding anything to the contrary in this Section XI.A., the City's obligations under
9 the SBCPF Settlement Agreement may not be discharged pursuant to the claims discharge
10 provisions of the Bankruptcy Code.

11 **B. Release by Holders of Pre-Confirmation Date Claims.**

12 **AS OF THE EFFECTIVE DATE, IN CONSIDERATION FOR THE OBLIGATIONS**
13 **OF THE CITY UNDER THE PLAN, EACH HOLDER OF A PRE-CONFIRMATION DATE**
14 **CLAIM IS DEEMED TO FOREVER RELEASE, WAIVE AND DISCHARGE ANY AND**
15 **ALL CLAIMS, ACTIONS, CAUSES OF ACTION, DEBTS, OBLIGATIONS, RIGHTS,**
16 **SUITS, DAMAGES, ACTIONS, REMEDIES, JUDGMENTS, AND LIABILITIES**
17 **WHATSOEVER (INCLUDING WITHOUT LIMITATION THE AB 506 PROCESS AND**
18 **THE ELIGIBILITY CONTEST) AGAINST THE CITY AND THE INDEMNIFIED**
19 **PARTIES, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN,**
20 **LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR**
21 **UNMATURED, EXISTING AS OF THE EFFECTIVE DATE OR THEREAFTER ARISING,**
22 **IN LAW OR AT EQUITY, WHETHER FOR TORT, CONTRACT, OR OTHERWISE,**
23 **BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION,**
24 **EVENT OR OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING OR TAKING**
25 **PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN**
26 **ANY WAY IN WHOLE OR IN PART TO THE CITY, THE INDEMNIFIED PARTIES AND**
27 **THEIR ASSETS AND PROPERTY, THE BANKRUPTCY CASE, THE DISCLOSURE**
28 **STATEMENT, THIS PLAN OR THE SOLICITATION OF VOTES ON THIS PLAN THAT**

1 SUCH HOLDER OF A PRE-CONFIRMATION DATE CLAIM WOULD HAVE BEEN
2 LEGALLY ENTITLED TO ASSERT (WHETHER INDIVIDUALLY OR COLLECTIVELY)
3 OR THAT ANY HOLDER OF A CLAIM OR OTHER ENTITY WOULD HAVE BEEN
4 LEGALLY ENTITLED TO ASSERT FOR OR ON BEHALF OF SUCH HOLDER OF A
5 PRE-CONFIRMATION DATE CLAIM (WHETHER DIRECTLY OR DERIVATIVELY);
6 **PROVIDED, HOWEVER,** THAT THIS SECTION XI.B. SHALL NOT OPERATE TO
7 WAIVE, DISCHARGE OR RELEASE THE RIGHTS OF HOLDERS OF PRE-
8 CONFIRMATION DATE CLAIMS TO ENFORCE THIS PLAN AND THE CONTRACTS,
9 INSTRUMENTS, RELEASES, AND OTHER AGREEMENTS OR DOCUMENTS
10 DELIVERED UNDER THIS PLAN OR ASSUMED PURSUANT TO THIS PLAN OR
11 ASSUMED PURSUANT TO FINAL ORDER OF THE BANKRUPTCY COURT.

12 C. **Injunction.**

13 Except as otherwise expressly provided in this Plan, all Entities who have held, hold, or
14 may hold Pre-Confirmation Date Claims shall be permanently enjoined from and after the
15 Confirmation Date, with respect to such Pre-Confirmation Date Claims, from: (i) commencing
16 or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any
17 kind against the City or its property or any or all of the Indemnified Parties or any of their
18 property; (ii) enforcing, levying, attaching, collecting, or recovering by any manner or means
19 any judgment, award, decree, or order against the City or its property or any or all of the
20 Indemnified Parties or any of their property; (iii) creating, perfecting, or enforcing any lien or
21 encumbrance of any kind against the City or its property or any or all of the Indemnified
22 Parties or any of their property; (iv) asserting any right of setoff, subrogation, or recoupment
23 of any kind against any obligation due to the City or any or all of the Indemnified Parties,
24 except as otherwise permitted by Bankruptcy Code section 553; (v) proceeding in any manner
25 in any place whatsoever that does not conform to or comply with the provisions of this Plan or
26 the settlements provided for in this Plan Documents; and (vi) taking any actions to interfere
27 with implementation or consummation of this Plan.
28

1 **D. Term of Existing Injunctions or Stays.**

2 **All injunctions or stays provided for in the Bankruptcy Case pursuant to Bankruptcy**
3 **Code sections 105, 362, or 922, or otherwise, and in existence immediately prior to the**
4 **Confirmation Date, shall remain in full force and effect until the Effective Date; and shall**
5 **continue in full force and effect after the Effective Date with respect to the ADR Procedures,**
6 **determination of the City's liability (or lack thereof) on any Pre-Confirmation Date Claim and**
7 **the allowance or disallowance thereof.**

8 **E. Exculpation.**

9 **Each of the following is an Exculpated Party under this Plan: (i) the City and each of**
10 **the persons (including their staff) acting in the following capacities during the Bankruptcy**
11 **Case: Mayor, City Attorney, City Manager, Assistant City Manager, member of the Common**
12 **Council, and any employee of the City that submitted a declaration in support of any pleading**
13 **filed by the City in the Bankruptcy Case; (ii) any of the City's financial advisors, attorneys,**
14 **accountants, investment bankers or advisors, consultants, representatives and other**
15 **professionals, including but not limited to the following: (A) Management Partners, Inc.; (B)**
16 **Urban Futures, Inc.; (C) Stradling Yocca Carlson & Rauth, a Professional Corporation; (D)**
17 **Law Office of Linda L. Daube, A Professional Corporation, and (E) Rust Omni; (iii) the**
18 **members of the Retiree Committee, (iv) U.S. Bank National Association, in its capacities as**
19 **indenture trustee; and (v) counsel for the Retiree Committee, Bienert Miller & Katzman, PLC.**
20 **Except with respect to obligations specifically arising pursuant to or preserved in this Plan, no**
21 **Exculpated Party shall have or incur, any liability to any person or Entity for any act taken or**
22 **omitted to be taken in connection with, relating to or arising out of the City's restructuring**
23 **efforts and the Bankruptcy Case, including the authorization given to file the Bankruptcy**
24 **Case, the formulation, preparation, negotiation, dissemination, consummation,**
25 **implementation, confirmation or approval (as applicable) of this Plan, the solicitation of votes**
26 **and acceptances for this Plan, the property to be distributed under this Plan, the settlements**
27 **implemented under this Plan, the Exhibits, the Appendix, the Disclosure Statement, any**
28 **contract, instrument, release or other agreement or document provided for or contemplated in**

1 connection with the consummation of the transactions set forth in this Plan or the management
2 or operation of the City; *provided, however*, that nothing in this Section XI.E shall be deemed
3 to release or exculpate any Exculpated Party for its willful misconduct or gross negligence.
4 Each Exculpated Party shall be entitled to reasonably rely upon the advice of counsel and
5 financial advisors with respect to its duties and responsibilities under, or in connection with,
6 the Bankruptcy Case, the administration thereof and this Plan.

7 **F. Comprehensive Settlement of Claims and Controversies.**

8 In consideration for the distributions and other benefits provided under this Plan, the
9 provisions of this Plan, including the exculpation and release provisions contained in this
10 Section XI, constitute a good faith compromise and settlement of all Claims, causes of action or
11 controversies relating to the rights that a holder of a Claim may have with respect to any
12 Claim against the City and/or the Indemnified Parties, any distribution to be made pursuant to
13 this Plan on account of any such Claim and any and all Claims or causes of action of any party
14 arising out of or relating to the Eligibility Contest. The entry of the Confirmation Order
15 constitutes the Bankruptcy Court's approval, as of the Effective Date, of the compromise or
16 settlement of all such Claims or controversies and the Bankruptcy Court's finding that all such
17 compromises and settlements are in the best interests of the City and the holders of Claims,
18 and are fair, equitable, and reasonable.

19 **G. Limitation on Scope of Release and Injunction Provisions of**
20 **Sections XI.B. and XI.C. With Respect to the Indemnified Parties**

21 Notwithstanding anything in Sections XI.B. and XI.C. to the contrary, the holders of
22 Litigation Claims against the Indemnified Parties shall be entitled to liquidate their claims in the
23 appropriate court, subject to first attempting to settle the claims through the ADR Procedures, and
24 seek a judgment against the Indemnified Party; except, however, that the enforcement of those
25 judgments, if any, against the Indemnified Parties and their property is enjoined, but this injunction
26 shall not impair (a) the right of the holders of the Litigation Claims to seek recovery against
27 available insurance, if any, or (b) the rights of the Covered Parties to the coverage under the BICEP
28 Agreement.

1 **H. Agreements with the United States**

2 The Confirmation Order shall provide that, notwithstanding any other provision of the Plan
3 or Confirmation Order to the contrary:

4 (a) The City's obligations pursuant to its Contracts for Loan Guarantee Assistance Under
5 Section 108 of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. §
6 5308, with the United States Department of Housing and Urban Development shall remain extant
7 and enforceable and not subject to discharge pursuant to 11 U.S.C. § 944; *provided, however*, that
8 the City retains all defenses to the enforceability of such obligations under applicable non-
9 bankruptcy law.

10 (b) Nothing in the Plan or Confirmation Order shall adversely affect in any way the rights
11 and remedies of the United States and the State of California under the consolidated actions styled
12 as *City of San Bernardino v. United States and State of California, on behalf of Department of Toxic*
13 *Substances Control v. United States*, Civil Action Nos. 96-8867 (MRP), 96-5205 (MRP) -
14 Consolidated (C.D. Cal.), including without limitation, the Consent Decree therein and any
15 amendment thereto ("C.D. Cal. Actions"), nor shall anything in the Plan or the Confirmation Order
16 divest or limit the jurisdiction of the United States District Court for the Central District of
17 California over the C.D. Cal. Actions. Upon the Effective Date of the Plan, the C.D. Cal. Actions
18 shall survive the bankruptcy case and may be adjudicated and enforced in the United States District
19 Court for the Central District of California, *provided, however*, that Bankruptcy Court approval must
20 be obtained for any allowance of an administrative expense.

21 (c) As to the United States, its agencies, departments or agents, nothing in the Plan or
22 Confirmation Order shall discharge, release, or otherwise preclude: (1) any liability of the City to the
23 United States, its agencies, departments or agents arising on or after the Effective Date; (2) any
24 liability to the United States, its agencies, departments or agents that is not a "claim" within the
25 meaning of section 101(5) of the Bankruptcy Code; (3) any valid defense of setoff or recoupment
26 with respect to a Claim of the United States, its agencies, departments or agents; (4) the continued
27 validity of the City's obligations to the United States, its agencies, departments or agents under any
28 grant or cooperative assistance agreement; (5) any liability of any entity under environmental law

1 arising or springing anew after the Effective Date that any entity would be subject to as a post-
2 Effective Date owner or operator of property; or (6) the United States from, subsequent to the
3 Confirmation Date, pursuing any police or regulatory action against the City.

4 **XII. RETENTION OF AND CONSENT TO JURISDICTION**

5 Following the Effective Date, the Bankruptcy Court shall retain and have exclusive
6 jurisdiction over any matter arising under the Bankruptcy Code and relating to the City, or arising in
7 or related to the Bankruptcy Case or this Plan, including, without limitation:

8 1. to resolve any matters related to the assumption, assumption and assignment,
9 rejection or other disposition of any contract or lease to which the City is a party or with respect to
10 which the City may be liable, and to hear, determine and, if necessary, liquidate any Claims arising
11 therefrom, including with respect to the BICEP Agreement and the Reinsurance Policies;

12 2. to enter such orders as may be necessary or appropriate to implement or
13 consummate the provisions of this Plan, and all other contracts, settlement agreements, instruments,
14 releases, exculpations, and other agreements or documents related to this Plan;

15 3. to determine any and all motions, adversary proceedings, applications, and
16 contested or litigated matters that may be pending on the Effective Date or that, pursuant to this
17 Plan, may be instituted by the City after the Effective Date or that are instituted by any holder of a
18 Claim before or after the Effective Date concerning any matter based upon, arising out of, or relating
19 to the Bankruptcy Case, whether or not such action initially is filed in the Bankruptcy Court or any
20 other court;

21 4. to ensure that distributions to holders of Allowed Claims are accomplished as
22 provided herein;

23 5. to hear and determine any objections to Claims or to proofs of Claim filed,
24 both before and after the Effective Date, including any objections to the classification of any Claim,
25 and to allow, disallow, determine, liquidate, classify, estimate, or establish the priority of or secured
26 or unsecured status of any Claim, in whole or in part;

27 6. to enter and implement such orders as may be appropriate in the event the
28 Confirmation Order is for any reason stayed, revoked, modified, reversed, or vacated;

1 **7.** to issue such orders in aid of execution of this Plan, to the extent authorized
2 by Bankruptcy Code section 1142(b);

3 **8.** to consider any modifications of this Plan, to cure any defect or omission, or
4 to reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation
5 Order;

6 **9.** to the extent that the City elects to bring such matters before the Bankruptcy
7 Court, to hear and determine all disputes regarding compensation for City professionals for services
8 rendered and expenses incurred prior to the Effective Date;

9 **10.** to hear and determine all disputes or controversies arising in connection with
10 or relating to this Plan or the Confirmation Order or the interpretation, implementation, or
11 enforcement of this Plan or the Confirmation Order or the extent of any Entity's rights or obligations
12 incurred in connection with, or released, discharged enjoined, or exculpated under, this Plan or the
13 Confirmation Order;

14 **11.** to issue injunctions, enter and implement other orders, or take such other
15 actions as may be necessary or appropriate to restrain interference by any entity with respect to the
16 consummation, implementation or enforcement of this Plan;

17 **12.** to determine any other matters that may arise in connection with or are related
18 to this Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release
19 or other agreement or document related to this Plan or the Disclosure Statement (including whether
20 the conditions to confirmation or the effectiveness of this Plan have been met, and any ancillary
21 matters that are necessary or integral to the confirmation or effectiveness of this Plan, such as
22 interpretation of the City Charter).

23 **13.** to hear any other matter for any purpose specified in the Confirmation Order
24 that is not inconsistent with the Bankruptcy Code;

25 **14.** to hear and determine all disputes or controversies arising in connection with
26 or relating to the terms or enforcement of any relevant agreements related to this Plan and
27 Confirmation Order; and

28 **15.** to enter a final decree closing the Bankruptcy Case.

1 **XIII. CONDITIONS PRECEDENT**

2 **A. Conditions Precedent to Confirmation.**

3 The condition precedent to confirmation of this Plan is the entry of the Confirmation Order in
4 form and substance satisfactory to the City.

5 **B. Conditions Precedent to Effective Date.**

6 The “effective date of this Plan,” as used in Bankruptcy Code section 1129, shall not occur,
7 and this Plan shall be of no force and effect, until the Effective Date. The occurrence of the
8 Effective Date is subject to the satisfaction (or waiver as set forth in Section XIII.C) of the following
9 conditions precedent:

10 **1. Confirmation Order.** The Confirmation Order shall have been entered, shall
11 be in full force and effect, and shall be a Final Order (but the requirement that the Confirmation
12 Order be a Final Order may be waived by the City at any time).

13 **2. Plan Documents.** All agreements and instruments contemplated by, or to be
14 entered into pursuant to, this Plan shall be in form and substance acceptable to the City; shall have
15 been duly and validly executed and delivered, or deemed executed by the parties thereto; and all
16 conditions to their effectiveness shall have been satisfied or waived.

17 **3. 1996 Refunding Bonds Amendment and 1999 Refunding Certificates of**
18 **Participation Amendment.** All conditions to the effectiveness of the 1996 Refunding Bonds
19 Amendment and the 1999 Refunding Certificates of Participation Amendment have been satisfied or
20 waived in accordance with the terms of such amendments.

21 **4. Authorizations, Consents, Etc.** The City shall have received any and all
22 authorizations, consents, regulatory approvals, rulings, no-action letters, opinions, and documents
23 that are necessary to implement this Plan and that are required by law, regulation or order.

24 **5. Timing.** The Effective Date shall occur on the first Business Day after the
25 City determines that all conditions precedent of Section XIII.B. are satisfied or waived.

26 **C. Waiver of Conditions to Effective Date.**

27 The City may waive in whole or in part any condition to effectiveness of this Plan *provided,*
28 *however,* that the City may only waive the condition to the effectiveness set forth in Section XIII.B.3

1 with the express prior written consent of National, the 1996 Refunding Bonds Trustee, and the 1999
2 Refunding Certificates of Participation Trustee, which consents shall not be unreasonably withheld.
3 Any such waiver of a condition may be effected at any time, without notice or leave or order of the
4 Bankruptcy Court and without any formal action, other than the filing of a notice of such waiver
5 with the Bankruptcy Court.

6 **D. Effect of Failure of Conditions.**

7 In the event that the conditions to effectiveness of this Plan have not been timely satisfied or
8 waived, and upon notification submitted by the City to the Bankruptcy Court, (i) the Confirmation
9 Order shall be vacated, (ii) no distributions under this Plan shall be made, (iii) the City and all
10 holders of Claims shall be restored to the status quo ante as of the day immediately preceding the
11 Confirmation Date as though the Confirmation Date never occurred, and (iv) all of the City's
12 obligations with respect to the Claims shall remain unchanged and nothing contained herein shall be
13 deemed to constitute a waiver or release of any claims by or against the City or any other entity or to
14 prejudice in any manner the rights, remedies, or claims of the City or any entity in any further
15 proceedings involving the City.

16 **E. No Admission of Liability.**

17 This Plan constitutes a settlement and compromise between and among the City and various
18 parties. This Plan shall not be deemed an admission or concession by any party with respect to any
19 factual or legal contention, right, defense, or position taken by the City.

20 **XIV. MISCELLANEOUS PROVISIONS**

21 **A. Modification of Plan.**

22 The City reserves the right to modify this Plan both before and after confirmation of this Plan
23 as permitted by Bankruptcy Code Section 1127(d) and the other applicable provisions of the
24 Bankruptcy Code and Bankruptcy Rules.

25 **B. Dissolution of the Retiree Committee.**

26 On the Effective Date, the Retiree Committee shall be released and discharged of and from
27 all further authority, duties, responsibilities, and obligations relating to and arising from and in
28

1 connection with the Bankruptcy Case, and the Retiree Committee shall be deemed dissolved and its
2 appointment terminated.

3 **C. Severability.**

4 If after entry of the Confirmation Order, any term or provision of this Plan is held by any
5 court having jurisdiction, including on appeal, to be invalid, void, or unenforceable, the remainder of
6 the terms and provisions of this Plan shall remain in full force and effect and shall in no way be
7 affected, impaired, or invalidated by such holding as long as the economic and legal substance of the
8 Claims treatment and other transactions that this Plan contemplates are not affected in any manner
9 materially adverse to the City. At the election of and with the consent of the City, the Bankruptcy
10 Court shall have the power to alter and interpret such term or provision to make it valid or
11 enforceable to the maximum extent practicable, consistent with the original purpose of the term or
12 provision held to be invalid, void, or unenforceable, and such term or provision shall then be
13 applicable as altered or interpreted. The Confirmation Order shall constitute a judicial determination
14 and shall provide that each term and provision of this Plan, as it may have been subsequently altered
15 or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

16 **D. Governing Law.**

17 Except where the Bankruptcy Code or other federal law applies, or where an Exhibit to the
18 Appendix or Plan Document provides otherwise, the rights, duties, and obligations arising under this
19 Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of
20 California, without giving effect to principles of conflicts of laws.

21 **E. Effectuating Documents and Further Transactions.**

22 The City is authorized (and its appropriate officers and employees are authorized and
23 directed) to execute, deliver, file, or record such contracts, instruments, releases, indentures, and
24 other agreements or documents and take such actions as may be necessary or appropriate to
25 effectuate and further evidence the terms, provisions and intent of this Plan.

1 **F. Request for Waiver of Automatic Stay of Confirmation Order.**

2 This Plan shall serve as a motion seeking a waiver of the automatic stay of the Confirmation
3 Order imposed by Bankruptcy Rule 3020(e). Any objection to this request for waiver shall be Filed
4 and served on or before the Objection Deadline.

5 **G. Notice of Effective Date.**

6 On or before 14 days after occurrence of the Effective Date, the City or its agent shall mail or
7 cause to be mailed to all holders of Claims the Notice of the Effective Date, which will inform such
8 holders of: (i) entry of the Confirmation Order; (ii) the occurrence of the Effective Date; (iii) the
9 assumption and rejection of the City's executory contracts and unexpired leases pursuant to this
10 Plan, as well as the deadline for the filing of Claims arising from such rejection; (iv) the deadline
11 established under this Plan for the filing of Administrative Claims; (v) the procedures for changing
12 an address of record pursuant to Section IX; and (vi) such other matters as the City deems to be
13 appropriate.

14
15 DATED: July 29, 2016

CITY OF SAN BERNARDINO, CALIFORNIA

17 By: /s/ Mark Scott
18 Mark Scott
19 City Manager

20 Submitted By:
21 STRADLING YOCCA CARLSON &
22 RAUTH, P.C.

23 By: /s/ Paul R. Glassman
24 Paul R. Glassman
25 Fred Neufeld
26 Marianne S. Mortimer
27 Kathleen D. DeVaney

28 Attorneys for the City of San Bernardino

Exhibit B

Pending Lawsuits in which Claims against Indemnified Parties Have Been Asserted

(Please review the "Order Confirming Third Amended Plan for the Adjustment of Debts of the City of San Bernardino, California (July 29, 2016), as Modified" to which this Exhibit B is attached, and in particular paragraphs 24.1 through 24.4.3. of such order.)

	COURT*	CASE NUMBER
Advance Healing Qualified Patients Association v. City of Highland, City of San Bernardino	State	CIVDS1304894
Jessica Alexander, Grace Chapel Of San Bernardino, Operation Grace v. Michael W McKinney, MICA PR, Inc, City of San Bernardino, R. Carey Davis, Mark Persico, Allen Parker	State	CIVDS1510158
J. A. through Guardian Ad Litem Keyondra Marshall, Sherry Watson, individually and as Representative of the Estate of Jarriel Dashawn Allen, and Jerry Allen v. City of San Bernardino, Officer Adam Affrunti, and Officer Chris Gray	Federal	5:09-cv-01388-JLQ-JC
Edward Andrade v. City of San Bernardino	State	CIVDS1511329
Jonathan Aragon, P.A. by and through Guardian Ad Litem v. City of San Bernardino Police Department	State	CIVDS1206481
Gustavo Arzola, Yesenia Rosales, FC by and through her Guardian Ad Litem Yesenia Rosales, AC by and through her Guardian Ad Litem, RA by and through his Guardian Ad Litem, ALC by and through her Guardian Ad Litem Yesenia Rosales v. City of San Bernardino, Officer G. Walout, Officer Ahmed	Federal	5:15-cv-02370-PA-KK
Monica Ballard, De'Sean Larkins, and Albert Dickson v. City of San Bernardino, San Bernardino Police Department, Marc Alvarez	Federal	2:10-cv-02769-DMG-AJW
Bank of America, N.A. v. Duane M. Magee, Sr., Velda L. Magee, The Redevelopment Agency of the City of San Bernardino, City of San Bernardino, First American Title Insurance Company, Rosalind A Joseph, City of San Bernardino As Successor Agency	State	CIVDS1504173
Bank of New York Mellon FKA the Bank of New York v. Lidia Gutierrez, City of San Bernardino	State	CIVDS1604507
Javier Banuelos v. City of San Bernardino, County of San Bernardino, Chief of Police Keith Kilmer, Officer S. Aguilar, Officer G. Prinz, Officer S. Bonshire	Federal	5:13-cv-00736-GW-DTB
Rajiv Barse, Anjali Barse and Sanjiv Barse v. City of San Bernardino	State	2:13-cv-05687-BRO-VBK
Hector Briones and Roseland Harding v. City of San Bernardino, San Bernardino Police Department, San Bernardino City Chief of Police Keith L. Kilmer, Adam Affrunti, State of California, California Highway Patrol	Federal	2:10-cv-07571-CBM-OP
Daniel Brown v. San Bernardino Police Department, and Officer Gutierrez, and Officer N Lindsay	Federal	5:13-cv-01376-JLS-JC
Erik A Brown v. City of San Bernardino, Officer A Castro, Officer A Stewart	Federal	2:12-cv-02300-RGK-OP
Arcadio Bucio, Guadalupe Garfias v. City of San Bernardino, Angelica Ordenez	State	CIVDS1114571

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	COURT*	CASE NUMBER
Sandee Bush v. City of San Bernardino	State	CIVDS1209194
Jemaine Bush, and Bush's Towing v. Officer M Block, Seargent Cokesh, Seargent S Lyter, and Jane or John Doe	Federal	5:13-cv-01795-DDP-JC
Jesus Castaneda v. City of San Bernardino, Jarrod Burguan, R Wicks, Prinz, Dillon, Olvera, Ahmed, Harris, and Jarrod Burguan	Federal	5:15-cv-00910-VAP-KK
Dillon Clark v. San Bernardino Chamber of Commerce, John Coute, City of San Bernardino Parks & Recreation	State	CIVDS1601383
Linda Cornwall, San Bernardino City Unified School District v. Skanska-Rados, Steve P. Rados, Inc, City of San Bernardino, County of San Bernardino, San Bernardino Associated Governments, California Department of Transportation	State	CIVDS1312628
Corey Day v. City of San Bernardino, San Bernardino Police Department, and Officer Jason Betts	Federal	5:13-cv-00362-JGB-SP
Jennifer DeVore v. City of San Bernardino, Arturo Reyna	State	CIVDS1602073
Maria Duran v. City of San Bernardino, Timothy Strutton	State	CIVDS1406337
Rosemary Easley, David W. Easley, Susan M Stewart, John C. Easley, Patricia A. Rhodes v. City of San Bernardino, Felix Emilio Salazar, Elizabeth Galindo Salazar, Stephen Easley	State	CIVDS1515304
Edwards, James v. San Bernardino Police Officer Erik Campos	State	CIVDS1112593
Nykisha Ellsion, Jacqueline York, Valen Edwards v. City of San Bernardino, San Bernardino Police Department, Officer Serbando Saenz, Officer Roy Diaz, Chief Mike Bildt	State	CIVDS1005001
E.M.W., a minor, through Guardian Ad Litem Angelica Martinez and A.W.M., a minor, through Guardian Ad Litem Angelica Martinez v. City of San Bernardino, Officer Jose Loera	State	CIVDS1110870
Ford Wholesale Company, Inc., Mitchell Thomas v. County of San Bernardino, San Bernardino County Flood Control District, City of San Bernardino, City of Riverside as a Cross-Defendant	State	CIVDS1109321
Joseph Frazier v. City of San Bernardino	State	CIVDS1409882
Amery Gaspard and Yvonne Hrindich v. DEA Task Force, Chuck Rosenburg, and County of San Bernardino	Federal	5:15-cv-01802-BRO-KES
William Gibson v. City of Highland, County of San Bernardino, City of San Bernardino	State	CIVDS1517420
Justin Ryan Golding v. City of San Bernardino, City of Riverside, Norstar Plumbing and Engineering Inc., and West Colony Community Association, Cross-Complainant Landmark American Insurance Company	State	CIVSS700791
Francisca Zina Gomez v. City of San Bernardino Municipal Water Department, Kelley Caldera, Jorge Castillo, Janice Reins, Robin Ohama	State	CIVDS1400951
Laura Guarino v. City of San Bernardino	State	CIVDS905017

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	COURT*	CASE NUMBER
O.G. and J.G., through Guardian Ad Litem, Beatriz A. Guzman v. Public Safety Academy, Michael Dickinson, Steve Filson, Kathy Toy, Laura Reddix, San Bernardino City Unified School District, City of San Bernardino; Southern Insurance Company	State	CIVDS1102174 (which has been consolidated with CIVDS1015386)
Andrew Hayden v. Donald Charles Sawyer, San Bernardino Police Department, City of San Bernardino	State	CIVDS1412409
Gaspar Gonzalez Hernandez v. City of San Bernardino, Steven Aguirre Aranda	State	CIVDS1411827
Alejandro Holguin, Christina Vasquez v. Scott Washburn, City of San Bernardino	State	CIVDS1200190
Jerry Holloway v. City of San Bernardino	State	CIVDS1305842
Rosa House v. California Department of Transportation, The People of the State of California, Skanska, City of San Bernardino, County of San Bernardino, Caltrans, Skansa USA Civil West California District, San Bernardino Associated Governments, Skanska-Rados, Department of Transportation, The People of the State of California	State	CIVDS1204063
State Farm Mutual Automobile Insurance, Ensley Willis Howell v. Gabriel Garcia, City of San Bernardino	State	CIVDS1105727
Interinsurance Exchange of the Automobile Club (Severa Woods) v. City of San Bernardino	State	CIVDS1602450
Katie Irvin v. Casa Ramona Academy, San Bernardino City Unified School District, City of San Bernardino	State	CIVDS1201930
Adrian Jimenez v. City of San Bernardino, San Bernardino Police Department, and Clayton Zeigler	Federal	5:13-cv-01874-DMG-SP
Francisco Yovani Sanchez Joaquin v. City of San Bernardino, Langsdon Canright, M. Flint	Federal	2:10-cv-07138-CAS-RC
Asinia Johnson v. County of San Bernardino, City of San Bernardino	State	CIVDS1600272
Larry Judge v. County of San Bernardino, City of San Bernardino, Officer Macias	State	CIVDS1403453
Melissa Kelley v. John Plasencia, City of San Bernardino	State	CIVDS1209109
Korey A. King v. San Bernardino Police Officers, City of San Bernardino, M. Siems, and Dimala	Federal	5:16-cv-02249-AG-E
Tina Marie Leyva v. San Bernardino Municipal Water Department, Mark Anthony Chavarria	State	CIVDS1600711
Carmen Lopez v. City of San Bernardino, Officer D Han, Officer O. Warren, A. Quiroz	State	CIVDS1507527
LYU Development v. City of San Bernardino, Department of Code Enforcement	State	CIVDS1511003
Maria Macias, Michael Macias v. City of San Bernardino, Charles Michael Vest	State	CIVDS1605768

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	COURT*	CASE NUMBER
Michael Ray Madrigal, Robert Martin Madrigal, Alice Madrigal, and Darlene Madrigal-Campa v. City of San Bernardino, Sharon Bonshire, John Cardillo, Janie Cozine, and Erik Campos	Federal	2:12-cv-03286-MWF-OP
Terrell Markham, Sonja Edwards, and Terry Markham v. City of San Bernardino and Officer Adam Affrunti	Federal	2:09-cv-08455-ODW-DTB
Lisa Matus, Rachel Matus, Raymond Matus, Lisa Marie Matus, Richard Matus v. City of San Bernardino, San Bernardino Police Department	State	CIVDS1201235
May, Sr., Cedric, Brenda Standifer, S.D.M. and S.J.M., minors by and through their Guardian Ad Litem Sasha Graves, Maurice Jennings, Anthony Jennings, and Jashanda Sandifer v. City of San Bernardino, Officer Joseph Aguilar, Officer Jose Vasquez, Officer Byron Clark, Officer Langston Canright, Officer Melissa Flint, and Sergeant James Beach	Federal	5:10-cv-00978-VAP-DTB
Antal Medina v. Spriggs, Harris, Johnson, and John Doe	Federal	5:16-cv-01123-R-JC
Mejia, Maria D., Salvador Melgoza, and Ma. Guadalupe Melgoza v. City of San Bernardino, Officer Brad Grantz; Officer Kenneth Edwards; Officer Troy Forsythe; Officer Christopher Emon; Officer Carlos Gutierrez; Sgt. Dave Dillon; Sgt. Ray Rocha; Sgt. Stephen Lyter; and Chief Keith Kilmer	Federal	5:11-cv-00452-VAP-DTB
Richard Melson Jr. v. Tanner Atkinson, City of San Bernardino	State	CIVDS1504395
Mercury Insurance Company v. City of San Bernardino	State	CIVDS1504846
Jose Mora, Roberta Mora, Julio Mora, Kathy Mora, Warren Shaun Barclay, Sandra Barclay, v. City of Highland, East Valley Water District, City of San Bernardino, County of San Bernardino cross-defendants are San Bernardino County Flood Control District, San Bernardino Valley Municipal Water District, First American Title Insurance Company	State	CIVDS1114384
Arnold Morales, M.M. v. City of San Bernardino Municipal Water Department	State	CIVDS1313050
Patricia Murray, J. M., C. M., M. M. I., V.M., H.M., and M.M., II v. City of San Bernardino, County of San Bernardino, San Bernardino Police Department, and San Bernardino County Sheriff's Department	Federal	5:13-cv-00276-TJH-DTB
Sheryl Jackson and Kelvin Nash v. City of San Bernardino, Officer Robert Bellamy, Officer Ronel Newton, Sergeant Dan Gomez, Officer Lanier Rogers, Officer Clint Walton, Officer Erick Martin, Officer Brett Murphy, Officer Shaun Sandoval, Officer Robert Hernandez, and Chief Keith Kilmer	Federal	2:09-cv-08671-RGK-FFM
Jeffery Newton, I.V.N., a minor, v. Par Electrical Contractors, Inc., Southern California Edison Company, City of San Bernardino, W.A. Rasic Construction Company, Inc.	State	CIVDS1508532
Joe Ortiz, Sr, Joe Andrew Ortiz, S. M. O, C.D.O., Nancy Ortiz, I.H., J.O., J. P. O., N. O., and Estate of Joe Ortiz, Jr.v. City of San Bernardino and Dominick Martinez	Federal	5:16-cv-02291-JGB-KK
Kiritkumar R. Patel, Purnima K. Patel v. Mark Scott, City of San Bernardino	State	CIVDS1609316

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	COURT*	CASE NUMBER
People of the State of California by and through the City Attorney for the City of San Bernardino, and City of San Bernardino v. Quantum Patient Center, Blake Ambartsumyan, Shannon Peters, Edna Fria, Mayra Lopez	State	CIVDS1600059
Placo San Bernardino, LLC v. City of San Bernardino, City of San Bernardino Economic Development Agency, Panattoni Development Company, Inc.	State	BC468955
Jermeisha C. Porter v. City of San Bernardino, W. Outlaw	State	CIVDS1102116
Rogelio G Quiroga v. J Betts	Federal	5:11-cv-02029-VAP-DTB
Carlos Ramirez v. County of San Bernardino, Michael E Siems, Officer Martin, and City of San Bernardino	Federal	5:15-cv-01015-FMO-PLA
Quibillah J Rasheed and Shaunisha Holliday v. City of San Bernardino and Devon Reid	Federal	5:14-cv-00586-DMG-MRW
Renter, Rovinski v. City of San Bernardino, Officer Dave Green	Federal	2:11-cv-07222-GAF-CW
M.A.R., by and through his Guardian Ad Litem Christy Luna v. City of San Bernardino, Michael Bildt, Sergeant R. Topping, Officer Chris Gray, Officer J. Simpson, and Officer C. Dai	State	CIVDS1009578
Maria De Lourdes Reyes, Israel Ruiz, Diana Richardson, Jessica Laurie, Randall Watson, Joshua Laurie, Adam Laurie, Jacob Laurie v. County of San Bernardino, County of San Bernardino Flood Control, City of San Bernardino, Los Angeles County Metropolitan Transportation, SanBAG, San Bernardino County Flood Control District, Southern California Regional Rail Authority	State	CIVDS1503543
Russell Eric Robertson v. City of San Bernardino, Officers of the City of San Bernardino Police Department, Sergeant D Green, and Officer D Acosta	Federal	5:12-cv-01626-RGK-DTB
Billy Ray Robinson v. San Bernardino Police Dept, Clark, and Plummer	Federal	5:11-cv-01205-RGK-AGR
Jennifer Robles, A.R., J.R., M.R., v. City of San Bernardino, San Bernardino Police Department	State	CIVDS1400540
Consuelo Rodriguez v. City of San Bernardino, Joseph Valdivia	State	CIVDS1502652
Kandy Roe v. City of San Bernardino, City of San Bernardino City Attorney's Office, City of San Bernardino Code Compliance	State	CIVDS1516961
Karmel Roe, Trustee for the Karmel F. Roe Trust v. City of San Bernardino, City of San Bernardino Code Enforcement Division - aka Community Policing Specialists, CPS Officer Michelle Neville, San Bernardino City Attorney's Office, City Hearing Officer Leland P. McElhaney	State	CIVDS1514187
Mekione Samatua, Faena Forsythe, Pepesima Tofili, Violeta Aga v. City of San Bernardino	State	CIVDS917832
Guadalupe Sanchez, Joseph Bennett v. County of San Bernardino, All American Asphalt, City of San Bernardino	State	CIVDS1415691

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	COURT*	CASE NUMBER
Sharkey, Matthew, Kathleen Cryder, Timothy Williamson, Joshua Gutierrez v. Public Safety Academy, Michael Dickinson, Steve Filson, Kathy Toy, Laura Reddix, San Bernardino City Unified School District, City of San Bernardino	State	CIVDS1015386 (which has been consolidated with CIVDS1102174)
John T. Shepherd, Barbara N. Jenkins, Title Acquisition Company I, LLC v. BAC Home Loan Servicing LP, Reconstrust Company NA, City of San Bernardino, Joyce Patel, JP Realty, San Bernardino Police Department, Bank of America, N.A.	State	CIVDS1208969
James Darryl Sheppard v. Carisma Owens, City of San Bernardino, County of San Bernardino	State	CIVDS1517429
Kristopher Dominiq Sheridan v. James Beach	Federal	5:13-cv-01756-ODW-MRW
Donald Sipple, John Simon, Karl Simonsen, Christopher Jacobs, New Cingular Wireless PCS LLC v. City of Alameda, City of San Bernardino, et al.	Los Angeles County Superior	BC462270
Carlos Rene Solis v. Douglas Height, Officer Neritoe, Douglas Heath, and Ronel Newton	Federal	5:12-cv-00736-JLS-MLG
State Farm Mutual Automobile Insurance Company v. City of San Bernardino, Jacob Lee Adams	State	CIVDS1404809
Altheia Taylor v. City of San Bernardino and S Casarez	Federal	5:09-cv-00240-MMM-MAN
Virgil L Taylor v. Brad Lawrence, Gerald Beall, Bennett, White, Everett, Detective Vicki Cervantes, and Brenda Shaw	Federal	5:09-cv-01656-CJC-MRW
The Inland Oversight Committee, Creed-21, Highland Hills Homeowners Association v. City of San Bernardino, Real Party In Interest First American Title Insurance Company	State	CIVDS1509296
Frances Thomas v. City of San Bernardino	State	CIVDS1109403
Lori Tillery v. City of San Bernardino	State	CIVDS1306172
Paul Triplett v. City of San Bernardino, Michael A. Billdt, Christopher Grey, Jason King	Federal	2:08-cv-07257-MWF-AJW
Sandra Uhrig v. Dave Carlson, City of San Bernardino	State	CIVDS1410793
Tiffany Valdez, Candy Rojas, Whitney Little v. Roberto Retamoza, City of San Bernardino, County of San Bernardino	State	CIVDS1407514
Gilbert Daniel Vallejo v. San Bernardino Police Department	State	CIVDS1207323
Tatiana Vargas-Roman v. City of San Bernardino, Joseph Beers, Richard Lee Hale, Joseph Beels	State	CIVDS1104423
Bobbie Vasquez, Sally Campos Bobadilla, Ramona Padilla v. Willie Mason Jr., City of San Bernardino	State	CIVDS1208006
Benito Villesca v. San Bernardino Police Department, City of San Bernardino, Arrowhead Regional Medical Center, County of San Bernardino	State	CIVDS1203211
Wade, Michael v. City of San Bernardino, Adam Affrunti	Federal	2:11-cv-09831-GHK-SP

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	COURT*	CASE NUMBER
Wang, Roger H., Vivine Wang v. Wal-Mart Real Estate Business Trust, Wal-Mart Stores, Inc., LSA Associates, Inc., Hall & Foreman, Inc., Harold Garcelon, City of San Bernardino, California Department of Transportation, The People of the State Of California	State	SCVSS129158
Valander Williams v. City of San Bernardino	State	CIVDS1310729
Latricia Woods, A.G. v. City of San Bernardino, City of San Bernardino Police Department	State	CIVDS1212419
Sheila Woods v. Sunset Ridge Apartments, LLC, City of San Bernardino, County of San Bernardino	State	CIVDS1212446
James Wrysinski, Paula Robbins v. Carlos Vargas Meza, City of San Bernardino	State	CIVDS1311254
X.J.G., a minor by and through his Guardian Ad Litem, Angelina Sanchez, C.A., a minor by and through his Guardian Ad Litem, Rosaisela Avalos, Brunilda Gonzalez, Angelina Cesar, Xochilt Gutierrez and Sasha Gonzalez v. City of San Bernardino, Police Chief Robert Handy, Kenny Kiecolt, and Anthony Castro	Federal	5:13-cv-02286-DSF-SP
Jose Zamora, Ana Maria Herrera, Cesar Castro, Jorge Nava, Concepcion Garriodo v. 9 Unidentified San Bernardino City Police Officers	State	CIVDS1513869

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21ST CENTURY INSURANCE AS SUBROGEE OF SENANAYAKE, SHAYANI
AFNI, INC., AS BENEFICIARY OF AAA (AUTOMOBILE ASSOCIATION OF AMERICA) AS SUBROGEE OF FIGEROID
AFNI, INC., AS SUBROGEE OF RAYMOND MACIAS
ALLIANCE UNITED INSURANCE, AS SUBROGEE OF LORENA GUTIERREZ
ALLSTATE INSURANCE, AS SUBROGEE OF RAYMOND VARGAS
ALLSTATE INSURANCE, AS SUBROGEE OF S. PEREYRA
ALVARADO, ALEX
ALVAREZ, RUBEN
AMERICAN AUTOMOBILE ASSOCIATION, AS SUBROGEE OF ANDRES TREVINO
AMERICAN AUTOMOBILE ASSOCIATION, AS SUBROGEE OF SAMUEL THOMAN
AMES, ROBERT
ANIMAL CONTROL
ANTUNEZ, HERNAN
ARIAS, FRANK
ARZOLA, RAYLINE
AT&T INC.
AUTOMOBILE ASSOCIATION OF AMERICA AS SUBROGEE OF AMANDA & TREVOR LUJAN
BALL, VICKIE
Y.B., GUARDIAN VERONICA CONTRERAS
BARRETT BUSINESS SERVICES INC
BARRY, SCOTT
BATTS, CHARLES
BAUER, KRISTIN
BELINSKI, PAUL
BISHOYI, PRABIN
BOLDS, DORA
BRADFORD, QUAMA
BRIGGS, TANYA
BROWN, CAPRICE
BRYAN, FELICIA
BURRTEC WASTE INDUSTRIES
CALIFORNIA ACCESS SCAFFOLD
CASTRO, CEASAR
CHAVEZ, MELISSA
CISNEROS, ELEANOR
CISNEROS, JENNIFER
CISNEROS, KRISTEN
COBB, ESTATE OF WILLIAM
COLE, DONNIE
COLEMAN, ARTHUR

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COMPARAN, ISRAEL
CONTRERAS, ALEXA
CONTRERAS, APRIL
CONTRERAS, FROYLAN
CONTRERAS, VERONICA
COOKS, LATISHA
CRUMSEY, CLAUDETTE
CRUZ, FELIX RENTERIA
DAVIS, DEBBIE
DE LA ROSA, JUNE
DETT, PAULA
DOE, JANE
DOMINGUEZ, EMILIO
EISMANN, ELBA
ELIZALDE, JUAN
EPPS, DIANNA
ESHMON, DAMONTE
FAST FORWARD CONCRETE CUTTING INC
FELDER, ARTHUR
FIGEROID, KRISTEN
FLORES, JESUS
FONTES, ART
FRANK & KIT'S GARAGE
FRANKLIN, MICHAEL
FRANKLIN, PAT
FRAZIER, JOSEPH
FREEMAN, LA TONYA
FRONTIER
FUENTES, SAMMY
FULLER, CECIL
GARCIA, ABIGAIL
GARCIA, GABRIEL
GARRETT, JOSEPH
GARRIOLO, CONCEPCION
GASTELUM, BRIAN
GOMEZ, STEPHANIE
GONZALES, FRANCISCO
GONZALEZ, KARINA
GOODMAN, VALERIE
GREEN, ARCHIE

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GREGGS, CHARISSE
GUZMAN, MARIA
HALL, JAMES
HALL, STARLEA
HARDEN, JIM
HERNANDEZ, ELIA
HERNANDEZ, JULIAN
HERNANDEZ, MARIELENA
HERNANDEZ, RICARDO
HERNANDEZ-GONZALEZ, GASPER
HERRERA, ANA MARIA
HILLBURGER, TARALYNN
HISPANO INVESTORS, INC
HOOKS, ADREANNA
HORACE MANN INSURANCE, AS SUBROGEE OF SUSAN JINOJOSA
HOT LINE CONSTRUCTION, INC
HOWARD, KEVIN
HOWARD, TILLY
HOWARD, VAN
HUANG, SHI XIONG
HURTADO, CHRISTIAN
INFINITY INSURANCE AS SUBROGEE OF FRANCISCA SEAY
INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB, AS SUBROGEE OF OTILIA AGUILAR
INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB, AS SUBROGEE OF RICO ENRIQUEZ
INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB, AS SUBROGEE OF SEVERA WOODS
ISHINO, TRACY
IUHAS, FLORIN
J.A, A MINOR
JACKSON, CASEY
JARRETT, CODY
JAVREGUI, FIDEL
JIMENEZ, JESUS
JOSPH, BETTY
KILPRATRICK, EDWARD
LAMAR, SAMUEL
LAMBERT, KATHARINA
LANDEROS, RUTH
LAWSON, JAMES

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LEETH, CANDRA
LEETH, SAUL
LERMA, EDITH
LEYVA, TINA
LLAMAS, LORENA
LOMA LINDA UNIVERSITY MEDICAL CENTER, AS SUBROGEE OF ROBERT HENDERSON
LORD, ERIC
N.L., GUARDIAN VERONICA CONTRERAS
MACIAS, MARIA
MACIAS, MICHAEL
MADDOX, DENISE
MAHARAJ, SANJAY
MANSFIELD, FRANK
MAPFRE INSURANCE AS SUBROGEE OF JESSICA LOMELI
MARTINEZ, JOEL
MARTINEZ, JOHN
MAYFIELD, TERESA
MCPHERSON, DEBBIE
MEDICAL CENTER CONVALESCENT HOSPITAL
MEDINA, ANTAL
MERCURY INS, AS SUBROGEE OF REGINA JUAREZ
MERCURY INS, AS SUBROGEE OF CATHERINE MUNOZ
MERCURY INS, AS SUBROGEE OF IKEEN THOMAS
MEZA-ROSALES, CHRISTIAN
MIRNADA, LEONARDO
MITCHELL, THOMAS
MORGAN, LYNN
MUNOZ, JOSE
NATIONAL GENERAL INSURANCE, AS SUBROGEE OF CONSUELO RODRIGUEZ
NATIONAL GENERAL INSURANCE, AS SUBROGEE OF JOHN UHRIG
NATIONWIDE INSURANCE, AS SUBROGEE OF BARRY, SCOTT
NAVA, JORGE
NELSON, JAMES
NGO, JEN
NGO, SUU
NUNEZ, CAMERON
NUNEZ, RANDY
PARKER, GREG
PEREZ, PAULA
PEWS, JR., JESSE

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PHAM, HONG THI VIET
PITTS, BEVERLY
POWELL, MICHAEL
PRINCE, TIMOTHY
PUGA, RUTH
QUERSHI, RASHID/CAL SIERRA PR
RAMIREZ, EVA SAN RAMON
RAMIREZ, JUAN
RAMIREZ, LUIS
RAMOS, NOE
REPUBLIC SERVICES
RIBERA, ELEANOR
RILEY, DAMION
ROBBINS, PAULA
ROBINSON, MITCHELL
ROMERO, IRENE
ROSALES, YESINIA
ROSETTI, SANDRA
ROSETTI, VICTOR
RUIZ, NISSA
S.T. (A MINOR), GUARDIAN STARLEA HALL
SAMATUA, JOE
SANCHEZ, ANTONIO
SANCHEZ, EDGAR
SAUREZ, ANGELICA
SAUREZ, SAUL
SCHAEFER, ROBERT
SCHENCK, STEPHEN
SCHENCK, STEPHEN (HEIRS OF)
SCOTT, SONJANETHA
SERRANO, ISABEL
SHAH, FAGUNI, (ESTATE OF)
SHAH, JYOTSNA
SHAH, NITIN
SHAH, VEENA, (ESTATE OF)
SHIELDS, SUSAN
SILVA, MARIA
SIXTOS, GIOVANNI
SKINNER SR, BRETT
SOUTHERN CALIFORNIA EDISON

**Pre-Confirmation Date claims against Indemnified Parties as to
which the City has received notice but no lawsuit has yet been filed**

(Please review the "Order Confirming Third Amended Plan for the Adjustment of Debts of the City of San Bernardino, California (July 29, 2016), as Modified" to which this Exhibit B is attached, and in particular paragraphs 24.1 through 24.4.3. of such order.)

SOUTHERN CALIFORNIA EDISON
ST. BERNARDINE MEDICAL CENTER, ENGINEERING DEPARTMENT
STANFIELD, SHARON
STATE FARM, AS SUBROGEE OF BRYANT TRUJILLO
STATE FARM, AS SUBROGEE OF WILLIAM WEATHERS
TAYLOR, EVANGELIST
TOBAR, ERNIE
TORRES, VICTOR
TRAVELERS CASUALTY INSURANCE CO.
TREUHERZ, CLAUDIA
TREUHERZ, ROBERT
TRUJILLO, BRYAN
TURNER, TRINA
UNITED FINANCIAL CASUALTY COMPANY, AS SUBROGEE OF CLIFFORD UTLEY
VASQUEZ, RAY
VERIZON
VERIZON/FRONTIER
VILLAGE GREEN APARTMENTS
VILLALUZ, GRACE
VILLALUZ, JUAN
WAHEEK, HAKIM
WILLIAMS, KEALON
WILLIAMS, MELISSA
WINDLEY, JOHN (ESTATE OF)